



RAJA RAMMOHUN ROY.

The English Works of Raja Rammohun Roy

SCL, KOLKATA



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Editor

JOGENDRA CHUNDER GHOSE

With an English Translation of
TUHFATUL MUWAHHIDDIN

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BIOGRAPHICAL SKETCH OF THE AUTHOR.



Raja Rammohun Roy, the founder of the Brahma Samaj or the Theistic Church of India, was born at Radhanagar, Bengal, in **May 1772**, of an ancient and honourable Brahman family. His father gave him a good education; he learnt Persian at home, Arabic at **Patna** (where he studied Euclid, Aristotle and the Koran), and Sanskrit at Benares. Although a devout idolater in boyhood, he early began to doubt and speculate, and at fifteen left home to study Buddhism in Tibet, where his criticisms on Lama-worship gave much offence. After some years' travel he returned, but, his anti-idolatrous sentiments obliging him to leave home, he lived at Benares until his father's death in 1803. *After this, he spent about ten years in the East India Company's service, latterly as Dewan or head officer in the collection of Revenues. During this period he first began to assemble his friends together for evening discussions on the absurdities of idolatry, and he also issued his first work, *Tuhfat-ul-Muwahhiddin* ("A gift to Monotheists"). This treatise was in Persian, with an Arabic preface, and was a bold protest against superstition and priestcraft. These proceedings brought on him much hostility, and even persecution, and in 1814 he retired to Calcutta for greater safety. Here he soon established a little Friendly Society (*Atmiya Sabha*), which met weekly to read the Hindu Scriptures and to chant Monotheistic hymns. In 1816 he translated the *Vedanta* into Bengali and Hindustani, following this by a series of translations from the Upanishads into Bengali, Hindustani and English, with introductions and comments of his own. These works he published at his own cost and disseminated widely among his countrymen. His writings excited much opposition and gave rise to numerous controversies, in which his ability, tact and learning rendered him fully a match for his antagonists. But the deadliest blow he inflicted upon Hindu superstition was his effective agitation against the rite of **Suttee**, the burning of living widows on the piles of their deceased husbands

In 1811 he had been a horrified witness of this sacrifice in his elder brother's family, and he had vowed never to rest until he had uprooted this custom. He exposed the hollow pretences of its advocates in elaborate pamphlets both in Bengali and English, and pressed the matter in every possible way, till at last the tide of public feeling turned, and on December 4, 1829, Lord William Bentinck issued a regulation abolishing Suttee throughout all the territories subject to Fort William. Rammohun was an active politician and philanthropist. He built school-houses and established schools in which useful knowledge was gratuitously taught through the medium both of the English and the native languages. He wrote a suggestive Bengali Grammar, of which he published one version in English (1826) and one in Bengali (1833). He wrote valuable pamphlets on Hindu law and made strenuous exertions for the freedom of the native Press; he also established (1822) and mainly conducted two native newspapers, the *Sambad Kaumudi* in Bengali, and the *Mirat-al-Akhbar* in Persian and made them the means of diffusing much useful political information. Becoming interested in Christianity he learned Hebrew and Greek in order to read the Bible in the original languages, and in 1820 he issued a selection from the four Gospels entitled—the Precepts of Jesus, the Guide to Peace and happiness. This was attacked by the Baptist Missionaries of Serampur, and a long controversy ensued in which he published three remarkable Appeals to the Christian Public in defence of the "Precepts of Jesus." He also wrote other theological tracts (sometimes under assumed names) in which he attacked both Hindu and Christian orthodoxy with a strong hand. But his personal relations with orthodox Christians were never unfriendly, and he rendered valuable assistance to Dr. Duff in the latter's educational schemes. He also warmly befriended a Unitarian Christian Mission which was started in Calcutta (1824) by Mr. William Adam, formerly a Baptist Missionary, who, in attempting to convert Rammohun to trinitarianism was himself converted to the opposite view. This Unitarian Mission, though not a theological success, attracted considerable sympathy among the Hindu Monotheists, whose Atmiya Sabha had then become extinct. At last Rammohun felt able to re-embody his cherished ideal, and on August 20, 1828, he opened the first Brahma Association (Brahma Sabha) at a hired house.

A suitable church-building was then erected and placed in the hands of trustees, with a small endowment and a remarkable trust-deed by which the building was set apart "for the worship and adoration of the Eternal, Unsearchable and Immutable Being, who is the Author and Preserver of the universe." The new church was formally opened on the 11th Magh (January 23), 1830, from which day the Brahma Samaj dates its existence. Having now succeeded in his chief projects, Rammohun resolved to visit England, and the King of Delhi appointed him envoy thither on special business, and gave him the title of Raja. He arrived in England on April 8, 1831, and was received with universal cordiality and respect. He watched with special anxiety the parliamentary discussions on the renewal of the East India Company's charter and gave much valuable evidence before the Board of Control on the condition of India. This he republished with additional suggestions ("Exposition of the Practical Operation of the Judicial and Revenue Systems of India") and also reissued his important "Essay on the Right of Hindus over Ancestral Property." He visited France, and wished to visit America, but died unexpectedly of brain-fever at Bristol, September 27, 1833. -- *The Encyclopædia Britannica*.

INTRODUCTION.

All earnest attempts at reform, whether religious, social, political, or of any other description, are based on faith in the ultimate triumph of truth and justice and humanity, which is synonymous with a belief in the moral government of the Universe. This is an essential element in religious belief. One would, therefore, expect to find Raja Rammohun Roy, the first all-round reformer in modern India, "above all and beneath all a religious personality. The many and far-reaching ramifications of his prolific energy were forth-puttings of one purpose. The root of his life was religion. He would never have been able to go so far or to move his countrymen so mightily as he did but for the driving power of an intense theistic passion." As in his life so in his writings, religion occupies the foremost place. His writings on religious subjects are the most important and most voluminous. But their very extent and variety are apt to puzzle those who may strive to find out the exact nature of his religious faith. The late Babu Rajnarain Bose had it from his father, a disciple of the Raja, that the latter before his departure to England had foretold that after his death various sects would claim him as belonging to their own particular ranks, but he declared that he did not belong to any particular sect. What the Raja foresaw has actually taken place. "It has been said that Rammohun Roy delighted to pass for a believer in the Vedanta with the Hindus, for a Christian among the adherents of that creed, and for a disciple of the Koran with the champions of Islamism.* The truth is that his eclecticism equalled his sincerity." † It would be out of place here to enter into a discussion of the question of his religious belief. ‡ Suffice it to say that he believed in pure theism, as his *Tuhfat-ul-Muwahhiddin* on the one hand and the Trust-Deed of the Brahmo Samaj on the other, in addition to

* His habit, in his religious controversies with various sects, of taking his stand not merely upon pure reason but mainly upon their scriptures led some people to think that he was all things to all men. This, of course, is a mistake. His controversial method was meant to convince the followers of different faiths that even their scriptures, which they professed implicitly to follow, enjoined the worship of the one true God.

† *The Contemporary Evolution of Religious Thought*, by Count Goblet d'Alviella, p. 233.

‡ For an exhaustive discussion of the subject see the Raja's biography in Bengali, by Babu Narendranath Chatterji, which ought to be translated into English.

many of his other works, proved conclusively. He did not reject any truth to be found in any scriptures or in the teachings of any prophet or saint; he revered and accepted truth from all quarters. but at the same time he did not accept any book or teacher as infallible. It should not, however, be forgotten that though he was thus cosmopolitan in his acceptance of truth, there are reasons to think that he believed in what may be called national or racial manifestations or developments of universal theism. His partiality (in no narrow sense) for the ethical portion of Christ's teachings is evident. But it would be wrong to suppose for that reason that he was exclusively or even principally a follower of Jesus. In making this statement we do not solely or chiefly rely on his prose writings in Sanskrit, Arabic, Persian, English or Bengali. His hymns in Bengali, too, in our opinion, afford a correct idea of the faith that lay enshrined in the deepest recesses of his heart. For, poetry springs from a deeper source in the soul than anything that is merely didactic, controversial, doctrinal or philosophical. And from the Raja's Bengali devotional poetry, one cannot but take him to have been a Hindu Theist or a theistic Vedantist.

It is sometimes asked whether Rammohun Roy intended that the society for the worship of one God that he founded should have a social counterpart in a religious community separate from all existing ones, such as the Brahmo Samaj has now become. The question is difficult to answer. But from the little study and thought that we have been able to devote to the subject, it seems to us that at the time when he established the Brahmo Samaj, he meant it to be simply a meeting-ground for people of all sects who wished to unite for divine worship, "a place of public meeting of all sorts and descriptions of people without distinction as shall behave and conduct themselves in an orderly, sober, religious and devout manner for the worship and adoration of the Eternal, Unsearchable and Immutable Being who is the author and preserver of the Universe but not under or by any other name, designation or title peculiarly used for and applied to any particular Being or Beings by any man or set of men whatsoever." Art and philosophy, though each is essentially one all the world over, have yet found various though fitting garb among different peoples according to racial, climatic and other causes. It seems to us, that similarly, the Raja may have thought that Theism, though at bottom one all over the world, has yet found various expression among different races; and though abstract truth is thinkable, yet as it finds actual manifestation in some concrete shape, it is the part of wisdom to allow the abstract universal theism in all countries and among all races to keep its native shape and colour, in which it is embodied, freed, of course, from all that is base and impure, with

a broad spirit of toleration for other shapes and colours : or in other words, he may have believed that Theism is one, and Hindu Theism, Semitic Theism, &c., are different forms of the same universal faith ; and that the future unity of the human race in religion is not to be realised by all mankind following the creed of this or that sect, but by each nation or race giving up all such erroneous and superstitious beliefs and pernicious customs and lifeless rituals as clash with pure Theism, but in every thing else keeping all that is racy of the soil, all that distinctively belongs to the religious genius of that nation or race, in a spirit of discriminating reverence for its own past and of respect and toleration for others.

Professor Monier Williams speaks of him as the first really earnest investigator in the science of comparative theology, which the world has produced.

Social customs and practices have been and are in all countries more or less connected with the religious beliefs of the people. It is, therefore, only natural that Rammohun Roy's programme of religious reform should lead on to and embrace social reform. In all countries, and specially in India, social reform consists chiefly in doing away with the disabilities or sufferings incident to difference of sex or the accident of birth. Or, in other words, social reformers have chiefly to fight with the spirit of caste and its evils and the subjection of women to the selfish interests and pleasures or supposed interests of the male sex. Rammohun Roy's chief claim to the gratitude of Hindu womanhood is the courageous and devoted part that he played in the movement for the abolition of *suttee*. He may or may not have been the central figure in that movement, but it must be admitted by all that but for his exertions that inhuman custom would not have been put down by law so soon as it was.

But to prevent the murder of widows was only to create another problem, namely, the amelioration of their condition. It is even now a question as to how we can best better their lot. Many solutions of the problem have been proposed and attempted ; their re-marriage, giving them such training as to enable them to lead honourable, useful and independent lives, so changing the Hindu law of inheritance as to make the means of living of Hindu widows less precarious, &c. His " Brief remarks regarding modern encroachments on the ancient rights of females, according to the Hindu Law of inheritance," was intended to attain the last object. That the condition of helpless widows deeply touched his heart appears also from No. VI. of the *Sambad Kaumudi*, which contained " an appeal to the rich Hindus of Calcutta to constitute a society for the relief of destitute widows, upon the principles of the Civil and Military Widows' Fund, established by order of Government." That he was earnestly in favour of

the education of women is quite clear from many passages in his writings, such, for instance, as the following :—

"As to their inferiority in point of understanding, when did you ever afford them a fair opportunity of exhibiting their natural capacity? How then can you accuse them of want of understanding? If, after instruction in knowledge and wisdom, a person cannot comprehend or retain what has been taught him, we may consider him as deficient; but as you keep women generally void of education and acquirements, you cannot, therefore, in justice pronounce on their inferiority. On the contrary, Lilavati, Bhanumati, the wife of the prince of Karnat, and that of Kalidas, are celebrated for their thorough knowledge of all the Sastras; moreover, in the Vrihadaranyak-Opanishad of the Yajur Veda it is clearly stated, that Yajnavalkya imparted divine knowledge of the most difficult nature to his wife Matreyi, who was able to follow and completely attain it!"

It is true that even with his unbounded enthusiasm in woman's cause and his indefatigable energy he could not take any steps for educating girls, widowed or unmarried; but it may be safely said that had he lived to return home from England and work here for a few years more, his contact with the comparatively enlightened womanhood of the West would certainly have borne fruit in the establishment of educational institutions for Indian girls and women. That Miss Mary Carpenter came out to India to labour for the good of Indian women is due mainly to her contact with the Raja. Regarding the re-marriage of child-widows, it is believed by some that he published a book advocating its introduction but no such production has been discovered among his works. His biographer, Babu Nagendra-nath Chatterji, says :— "We have heard that Rammohun Roy used to express a desire to his friends that the re-marriage of child-widows should become prevalent. When he went to England, a rumour spread everywhere that on coming back home he would introduce the custom of the re-marriage of widows."

It will appear from a study of his "Brief remarks regarding the ancient rights of females" that he was opposed to polygamy, kulinism and the practical selling of girls in marriage. He showed from the Shastras that second marriages were authorised only under certain circumstances, and observed :

"Had a Magistrate or other public officer been authorized by the rulers of the empire to receive applications for his sanction to a second marriage during the life of a first wife, and to grant his consent only on such accusations as the foregoing being substantiated, the above Law might have been rendered effectual, and the distress of the female sex in Bengal, and the number of suicides, would have been necessarily very much reduced."

We have no indication in his works of his views on child-marriage. Perhaps in his days in Bengal, though such marriages must have been customary, their consummation was postponed to a maturer age, thus minimizing the evil to some extent, as is still the case in some provinces of India. But with regard to this item, too, of the social reform programme, one can only speculate as to what he would have

done had he lived to come back from England. For, a man, who had such innate chivalry in his nature that he would never take his seat if any woman of what rank so ever remained standing in his presence, could not have failed to observe the evil effects on women of such a custom, at any rate after coming in contact with the comparatively free and healthy womanhood of the West.

That Rammohun Roy had not failed to observe the evil effects of caste will appear from the extract from one of his letters printed on page 929 of this edition. No. VIII of his *Sambad Kaumudi*, too, prints the plea of a philanthropist [probably himself], who observing the misery caused by prejudices of caste, urges the Hindus not to debar themselves thereby from mechanical pursuits, but to cultivate "such arts as would tend to their comfort, happiness and independence." By crossing the ocean and in other ways, the Raja, to a great extent, broke through the unreasonable and injurious restrictions imposed by caste. Why he did not or could not do so entirely, is not known to a certainty. But from his conduct in other matters, we should hesitate to ascribe to him any motives of cowardice or self-interest. He published with a Bengali translation the first chapter of a Sanskrit work against caste, named *Bajrasuchi*, by Mrityunjayacharya.

In most things Raja Rammohun Roy was in advance of his age, and rose above the influence of his surroundings. He was the pioneer in many reform movements. But in the matter of total abstinence from intoxicating drinks, his views and practice differed from those of most reformers of the present day. He was a moderate drinker and even quoted some Shastras in favour of the practice. There is also another matter in which he was not in advance of his age. In his "Brief remarks regarding the ancient rights of females," he says that of the three modes of conduct left to the widows of a polygamous man to pursue, the second is "to walk in the paths of unrighteousness for their maintenance and independence." And this he, of course, condemns, and thereby shows himself to be, as we otherwise also know him to have been, an advocate of social purity. Yet it would appear that he found nothing objectionable in entertaining his guests with the nautch and music of dancing girls in his residence. For we find in Fanny Parkes' "Wanderings of a Pilgrim," Vol. I, Chap. IV (Residence in Calcutta, May 1823), the following passage:—

"The other evening we went to a party given by Rammohun Roy, a rich Bengali baboo: the grounds, which are extensive, were well illuminated, and excellent fire-works displayed. In various rooms of the house nâch girls were dancing and singing."

It is well known that Rammohun Roy himself founded and helped others in founding schools. He took a prominent part in the great educational controversy between the "Orientalists" and the "Anglicists":

and sided with the latter. But for his opposition the clamour of the former for the exclusive pursuit of Oriental studies would most probably have prevailed. His *Letter on English Education* to Lord Amherst is a remarkably convincing production.*

"It was owing, perhaps, to this agitation," remarks Babu Jogen-dra Chunder Ghose on this letter, "that the foundation-stone of the building intended for the Sanskrit College was laid in the name of the Hindu College (February, 1824), and the Hindu College was located there together with the Sanskrit College." For the direct and indirect beneficial results of Western education we are indebted to Raja Rammohun Roy as much as to Lord Macaulay, Lord William Bontineck, David Hare, &c.

Rammohun Roy wrote text-books in Bengali on Grammar, Geography, Astronomy and Geometry. He is the father of modern Bengali

* One passage in this letter possesses a special interest of its own. It runs thus:—

"Neither can much improvement arise from such speculations as the following which are the themes suggested by the Vedanta, in what manner is the soul absorbed in the Deity? What relations does it bear to the Divine Essence? Nor will youths be fitted to be better members of society by the Vedantic doctrines which teach them to believe, that all visible things have no real existence, that as father, brother, &c., have no actual entity, they consequently deserve no real affection, and therefore the sooner we escape from them and leave the world the better."

The missionaries advanced in the *Samachar Darpon*, the last objection, which Rammohun assailed in his *Brahmological Magazine*. He further established a Vedanta College. This seeming inconsistency is explained by Miss Collett as follows:—"The teachings of the Vedanta lend themselves to a remarkable diversity of theological interpretation. They are appealed to equally by dualistic and non-dualistic schools of thought. They contain passages which breathe a lofty and ethical Theism; in other places they seem to countenance a Pantheism that is simply Acosmism—the denial of all finite existence; . . . According as the Vedanta is taught with or without a proper selective adjustment of its widely various contents, its value as a subject of instruction may be set high or low. In the ordinary Hindu schools it was taught in false perspective, with a discrimination exercised if at all in favour of what was trivial, incorrect, polytheistic. Rammohun therefore opposed with all his might the suggestion that the British Government should perpetuate or encourage this kind of Vedantic instruction. At the same time he saw in the Vedanta rightly handled and "rightly divided" a means for leading his countrymen out of their prevailing superstition and idolatry into a pure and elevated Theism. Their devotion to the Vedantic scriptures was the lever by which Rammohun hoped to lift them into a simpler and nobler faith. Therefore he founded the Vedanta College; and therefore also he controverted the missionaries' wholesale disparagement of the Vedanta. If the missionaries had succeeded in discrediting the Vedanta, they would in Rammohun's eyes have broken down the bridge which enabled men to pass from Hindu Polytheism to Hindu Theism. He thus combated both the conservative Christian who advocated indiscriminate rejection and the conservative Hindu who advocated the indiscriminate retention of Vedantic teaching; and he provided for a discriminating instruction in the ancient system which should have the approval of liberal Hindus and liberal Christians."

literary prose. He taught his people the use of marks of punctuation. There was in his nature a deep vein of genuine poetry, too; as his Bengali hymns show. He was the first to write theistic hymns in Bengali. Pandit Ramagati Nyayaratna, a well-known Hindu historian of the Bengali language and literature, truly observes that "they appear to possess the power of melting even stony hearts, of making the most irreligious devoted to God and of making hearts sunk in worldliness detached from the world." They are prized by theists and idolaters alike. A few of them are in Sanskrit. We believe an English translation of Rammohun's hymns by Babu Mohinimohan Chatterjee, M. A., has been published by the Adi Brahma Samaj of Calcutta.

His Bengali journal, the *Sambad Kaumudi*, first appeared in 1821. He is the founder of native journalism in India. The *Sambad Kaumudi* was not exclusively or chiefly a political publication. It, as well as his Persian newspaper, *Mirat-ul-Akhbar* or *Mirror of Intelligence*, had an educational purpose, too. Besides politics, subjects of a historical, literary and scientific character were treated of therein.

Lawyers of eminence have declared that the legal writings of the Raja, such as his "Brief Remarks on Ancient Female Rights," "The Rights of Hindus over Ancestral Property according to the Law of Bengal," would do credit to jurists of the highest standing.

To the public Rammohun Roy is best known as a religious and social reformer. To many he is also known as a literateur and educationist. But he is not so well known as a political reformer and agitator. A brief account of his politics may not therefore be out of place here.

Mr. William Adam, a Baptist Missionary, whose association with Raja Rammohun Roy led him to adopt Unitarian opinions, bears the following testimony to his love of liberty:—

"He would be free or not be at all... Love of freedom was perhaps the strongest passion of his soul,—freedom not of action merely, but of thought. This tenacity of personal independence, this sensitive jealousy of the slightest approach to an encroachment on his mental freedom was accompanied with a very nice perception of the equal rights of others, even of those who differed most widely from him."

It was this love of liberty that was the source of all his political opinions and the mainspring of all his political activity. It made him take interest in and deeply sympathise with all political movements all over the world that had for their object the advancement of popular freedom. Some instances may here be given of Rammohun's cosmopolitan sympathies in the region of politics.

"When the intelligence reached India that the people of Naples after extorting a constitution from their despotic king were crushed back into servitude by the Austrian troops, in obedience to the joint mandate of the crowned heads of Russia, Prussia, Austria, Sardinia, and Naples, Rammohun felt it keenly."

In a letter to Mr. Buckingham, dated August 11, 1821, he wrote :—

"I am afraid I must be under the necessity of denying myself the pleasure of your society this evening; more especially as my mind is depressed by the late news from Europe..... From the late unhappy news I am obliged to conclude that I shall not live to see liberty universally restored to the nations of Europe, and Asiatic nations, especially those that are European colonies, possessed of a greater degree of the same blessing than what they now enjoy.

"Under these circumstances I consider the cause of the Neapolitans as my own, and their enemies as ours. Enemies to liberty and friends of despotism have never been, and never will be, ultimately successful."

"These noble words," says Miss Collett, "reveal how profoundly Rammohun felt with the late Russel Lowell that "In the gain or loss of one race all the rest have equal claim"; and that

"Wherever wrong is done

To the humblest and the weakest, 'neath the all-beholding Sun,

That wrong is also done to us."

Rammohun's Persian weekly *Mirat-ul-Akhbar* contained an article on "Ireland, the causes of its distress and discontent". In this he dwelt on the evils of absenteeism and the injustice of maintaining Protestant clergymen out of revenues wrung from the Roman Catholic inhabitants of Ireland. He said :—

How admirable is the observation of Saadi (on whom be mercy!)

"Do not say that these rapacious ministers are the well-wishers of his Majesty ;
For in proportion as they augment the revenue of the State, they diminish his popularity ;

O statesman, apply the revenue of the king towards the comfort of the people ;
then during their lives they will be loyal to him."

When the news of the establishment of constitutional Government in Spain reached India, he gave a public dinner at the Town Hall. Some months before his departure for England, news reached Calcutta of the latest French Revolution, and, "so great was his enthusiasm that," we are told, "he could think and talk of nothing else!" He viewed it as a triumph of liberty and rejoiced accordingly. On his voyage to England he landed at the Cape for only an hour or two. "Returning on board he met with a nasty accident. The gangway ladder had not been properly secured, and he got a serious fall, from which he was lame for eighteen months afterwards and indeed never fully recovered. But no bodily suffering could repress his mental ardour. Two French frigates, under the revolutionary flag, the glorious tri-colour, were lying in Table Bay ; and lame as he was, he would insist on visiting them. The sight of these colours seemed to kindle his enthusiasm, and to render him insensible to pain." During the days of the Reform Bill agitation in England, he

considered the struggle between the reformers and anti-reformers as a struggle between liberty and oppression throughout the world : between justice and injustice, and between right and wrong. He publicly avowed that in the event of the Reform Bill being defeated, he would renounce his connection with England. His Persian weekly, the *Mirat*, did not, however, favourably consider the national aspirations of Greece. Muhammadan sympathy with the Turks may have been to some extent responsible for this attitude to Greece.

We now pass on to the Raja's Indian political opinions. Our politics are sure to be tinged by our attitude towards British rule in India. It is therefore necessary to know what the Raja thought of British rule in India in his day. In his autobiography he writes :—

“.....I proceeded on my travels, and passed through different countries, chiefly within, but some beyond, the bounds of Hindoostan, with a feeling of great aversion to the establishment of the British Power in India. When I had reached the age of twenty, my father recalled me, and restored me to his favour ; after which I first saw and began to associate with Europeans, and soon after made myself tolerably acquainted with their laws and form of government. Finding them generally more intelligent, more steady and moderate in their conduct, I gave up my prejudice against them, and became inclined in their favour, feeling persuaded that their rule, though a foreign yoke, would lead more speedily and surely to the amelioration of the native inhabitants ;.....”

He concluded his “ Final Appeal to the Christian Public ”

“by offering up thanks to the supreme Disposer of the events of this universe, for having unexpectedly delivered this country from the long-continued tyranny of its former Rulers, and placed it under the government of the English,—a nation who not only are blessed with the enjoyment of civil and political liberty, but also interest themselves in promoting liberty and social happiness, as well as free inquiry into literary and religious subjects, among those nations to which their influence extends.”

But Rammohun gave to Muhammadan rule also its due meed of praise by mentioning in what respects it was superior to British rule. He wrote in his “ Appeal to the King in Council ” against the Press Regulation :

“ Your Majesty is aware, that under their former Mohammadan Rulers, the natives of this country enjoyed every political privilege in common with Mussulmans, being eligible to the highest offices in the State, entrusted with the command of armies and the government of provinces and often chosen as advisers to their Prince, without disqualification or degrading distinction on account of their religion or the place of their birth. They used to receive free grants of land exempted from any payments of revenue, and besides the highest salaries allowed under the Government, they enjoyed free of charge large tracts of country attached to certain offices of trust and dignity, while natives of learning and talent were rewarded with numerous situations of honour and emolument. Although under the British Rule, the natives of India, have entirely lost this political consequence.....”, &c.

Some of the contents of the earlier numbers of the *Sambad Kaumudi* may be given here :—

- No. I.—An appeal to the Government for the establishment of a school for the gratuitous instruction of the poor but respectable Hindus.
- No. II.—Humble address to the Government soliciting the extension of trial by jury to Mofussil, Zilla and Provincial Courts of Judicature.
- No. III.—An appeal to the Government to relieve the Hindu community from the inconvenience consequent upon there being only one Ghaut for the burning of dead bodies whereas an immense space of ground has been granted for the burial of Christians.

Appeal to Government for the prevention of the exportation of the greatest part of the produce of rice from Bengal to foreign ports.

Appeal to Government to enable the middle class of native subjects to avail themselves of the treatment of European physicians.

Appeal to the Calcutta Magistrates to resort to rigorous measures for relieving the Hindu inhabitants of Calcutta from the serious grievance of Christian gentlemen driving their buggies amongst them and cutting and lashing them with whips, without distinction of sex or age, while they quietly assembled in immense numbers to see the images of their deities pass in the Chitpore Road, when many of them through terror and consternation caused by the lashing inflicted on the spectators fell down into drains, while others were trampled under foot by the crowd.

Raja Rammohun Roy believed that a free Press is one of the best safeguards of liberty. This conviction found expression in his petitions against the Press Regulation (1) to the Supreme Court, and (2) to the King in Council. The Press ordinance prescribed that thenceforth no one should publish a newspaper or other periodical without having obtained a license from the Governor-General in Council, signed by the Chief Secretary. The memorial submitted to the Supreme Court "may be regarded as the *Areopagitica* of Indian History. Alike in diction and in argument, it forms a noble landmark in the progress of English culture in the East."

This Memorial proving fruitless, Rammohun and his co-adjustors appealed to the King in council. Says Miss Collett :

"The appeal is one of the noblest pieces of English to which Rammohun put his hand. Its stately periods and not less stately thought recall the eloquence of the great orators of a century ago. In a language and style for ever associated with the glorious vindication of liberty, it invokes against the arbitrary exercise of British power the principles and traditions which are distinctive of British History."

This Memorial, too, proved unavailing. The Privy Council declined to comply with the petition.

A new Jury Act came into operation in the beginning of 1827. On August 18th, 1828, Rammohun wrote to Mr. J. Crawford and entrusted to him petitions against the Act for presentation to both Houses of

Parliament, signed by Hindus and Mohammedans. He thus concisely stated the grounds of grievance :—

"In his famous Jury Bill, Mr. Wynn, the late President of the Board of Control, has by introducing religious distinctions into the judicial system of this country, not only afforded just grounds for dissatisfaction among the Natives in general, but has excited much alarm in the breast of every one conversant with political principles. Any Natives, either Hindu or Mohamedan, are rendered by this Bill subject to judicial trial by Christians, either European or Native, while Christians, including Native converts, are exempted from the degradation of being tried either by a Hindu or Mussulman juror, however high he may stand in the estimation of society. This Bill also denies both to Hindus and Mohamedans the honor of a seat in the Grand Jury even in the trial of fellow Hindus or Mussulmans. This is the sum total of Mr. Wynn's late Jury Bill, of which we bitterly complain."

Rammohun went on to suggest a possibility " which is by no means so remote now as when he wrote " :—

"Supposing that 100 years hence the Native character becomes elevated from constant intercourse with Europeans and the acquirement of general and political knowledge as well as of modern arts and sciences, is it possible that they will not have the spirit as well as the inclination to resist effectually any unjust and oppressive measures serving to degrade them in the scale of society? It should not be lost sight of that the position of India is very different from that of Ireland, to any quarter of which an English fleet may suddenly convey a body of troops that may force its way in the requisite direction and succeed in suppressing every effort of a refractory spirit. Were India to share one-fourth of the knowledge and energy of that country, she would prove from her remote situation, her riches and her vast population, either useful and profitable as a willing province, an ally of the British empire, or troublesome and annoying as a determined enemy.

"In common with those who seem partial to the British rule from the expectation of future benefits arising out of the connection, I necessarily feel extremely grieved in often witnessing Acts and Regulations passed by Government without consulting or seeming to understand the feelings of its Indian subjects and without considering that this people have had for more than half a century the advantage of being ruled by and associated with an enlightened nation, advocates of liberty and promoters of knowledge."

The letter quoted above is remarkable for the far-sighted glance into the future which it reveals. Here in germ is to be found the national aspiration which is now breaking forth into demands for a greater measure of self-government than the people at present enjoy. Rammohun's English biographer observes that

"The prospect of an educated India, of an India approximating to European standards of culture, seems to have never been long absent from Rammohun's mind; and he did, however vaguely, claim in advance for his countrymen the political rights which progress in civilization inevitably involves. Here again Rammohun stands forth as the tribune and prophet of New India."

The Select Committee of the House of Commons which was appointed in February, 1831, and reappointed in June to consider the renewal of the Company's Charter invited him to appear before it.

Rammohun declined this request but tendered his evidence in the form of successive "Communications to the Board of Control." The first of these dealt with Revenue. The Raja appears here as the champion of the rack-rented ryot. While the Zemindars or landholders had been greatly benefited by the Permanent Settlement of 1793, while their wealth and the wealth of the community had generally increased, the poor cultivator was no better off. The remedy he asked for was in the first place the prohibition of any further rise in rent, and secondly--rents being now so exorbitantly high as to leave the ryot in a state of extreme misery,—a reduction in the revenue demanded from the Zemindar so as to ensure a reduction in the ryot's rent. The decrease in revenue he would meet by increasing taxes upon luxuries or by employing as Collectors low-salaried Indians instead of high-salaried Europeans. It may here be incidentally observed that nearly three-quarters of a century ago, when education was in a backward condition, Raja Rammohun Roy considered Indians fit for the duties of Collectors. He also considered them well qualified to discharge all judicial duties.

He approved of the settlement in India of a few model landlords from England, but was careful to stipulate that they should not be drawn from the lower classes. This is not the place to criticize the Raja's views on this subject; but it seems open to grave doubt whether a European landed aristocracy for India would have been on the whole beneficial to the people of this country. He concluded with an earnest appeal "to any and every authority to devise some mode of alleviating the present miseries of the agricultural peasantry of India."

It admits of no doubt that the condition of the proprietors of land has improved under the system of permanent assessment. But the Government seems at present to believe that that system has resulted in loss of revenue to the State. It is therefore, important to quote the Raja's opinion on this subject.

"The amount of assessment fixed on the lands of these provinces at the time of the Permanent Settlement (1793), was as high as had ever been assessed, and in many instances higher than had ever before been realized by the exertions of any government, Mohamedan or British. Therefore the Government sacrificed nothing in concluding that settlement. If it had not been formed, the landholders (*Zemindars*) would always have taken care to prevent the revenue from increasing by not bringing the waste lands into cultivation, and by collusive arrangements to elude further demands; while the state of the cultivators would not have been at all better than it is now. However, if the Government had taken the whole estates of the country into its own hands, as in the ceded and conquered provinces and the Madras Presidency, then, by allowing the landholders only ten per cent. on the rents (*Malikanah*), and securing all the rest to the Government, it might no doubt have increased the revenue for a short time. But the whole of the landlords in the country would then have been reduced to the same wretched condition

as they are at present in the ceded and conquered Provinces of the Bengal Presidency or rather annihilated, as in many parts of the Madras territory ; and the whole population reduced to the same level of poverty. At the same time, the temporary increase of revenue to Government under its own immediate management would also have soon fallen off, through the misconduct and negligence of the revenue officers, as shown by innumerable instances in which the estates were kept *khas*, i.e., under the immediate management of Government."

" Besides, Government appropriates to itself an enormous duty on the transit and exportation of the produce of the soil, which has, since the period of the Perpetual Settlement, increased to a great amount from the exertions of the proprietors in extending and improving cultivation, under the assurance that no demand of an increase of revenue would be made upon them on account of the progressive productiveness of their estates."

The Raja contrasts the effects of the permanent and periodical systems of assessment in two statements.

" By a comparative view of the revenues of Bengal, Behar and Orissa, from the period of the Perpetual Settlement, it appears that, in the thirty-five years, from 1792-93 to 1827-28, there was a total increase on the whole amount of the Revenue of above 100 per cent. (101·71), and that this increase has been steady and progressive up to the present time ;....."

" By a comparative view of the revenue of the old British territory in Madras, it appears that during the same period of thirty-five years (*i.e.* from 1793 to 1828) there was an increase of only about 40 per cent., (40·15) on the total amount of the whole revenue. That the increase during the first 17 years was 43 $\frac{22}{100}$ per cent. ; that in the next 8 years the increase was only about 3 $\frac{1}{2}$ per cent. ; and that in the last 18 years there has been a decrease of 2·15 per cent."

In an appendix he urged the Imperial utility of the policy of fixing a maximum rent to be paid by each cultivator, "that their rents already raised to a ruinous extent, might not be subject to further increase." His advocacy of this policy is so statesmanlike that no apology is needed for quoting his views on the subject. To recognise the indefeasible rights of the ryots in the soil would make them loyal to the power that secured them and

" ready to rise in defence of it, as a militia or in any other shape that might be required ; so as to secure the British rule in a foreign and remote empire, alike from internal intrigue and from external aggression, without the necessity of keeping on foot an immense standing army at an enormous cost. This consideration is of great importance in respect to the natives of the upper and western provinces, who are distinguished by their superior bravery, and form the greater part of the British Indian army. If this race of men, who are by no means deficient in feelings of personal honor and regard for family respectability, were assured that their rights in the soil were indefeasible so long as the British power should endure, they would from gratitude and self-interest at all time be ready to devote their lives and property in its defence.

" The saving that might be effected by this liberal and generous policy, through the substituting of a militia force for a great part of the present standing army, would be much greater than any gain that could be realized by any system of increasing land

revenue that human ingenuity could devise. How applicable to this case is the following line of the Persian sage (Saadi):—

Be rayat sulh kun Wa'z jang i khaam ai man nishin
Z'unki shahinshah i adil ra rayat lashkar ast.

"Be on friendly terms with thy subjects, and rest easy about the warfare of thine enemies; for to an upright prince his people is an army."

While on the subject of Land Settlement we may say that in 1828, by Regulation III of that year, the revenue collector in each district was authorised to dispossess the holders of tax-free lands by his own authority, without reference to any judicial courts, if the collector should be of opinion, after such enquiry as might satisfy himself that the title of the proprietor was not valid. It was therein enacted that "such decision of the Collector shall have the force and effect of a decree"; also, that "it shall not be necessary for him to transmit his proceedings to the Board of Revenue," but "the party dispossessed might appeal," and by art. 3., whether an appeal be filed or not, "that it shall and may be lawful for the Collector immediately to carry into effect his decision by attaching and assessing the lands." This regulation produced great alarm and distrust amongst the natives of Bengal, Behar and Orissa, many of whom petitioned against the principle of one party, who lays claim to the land, dispossessing an actual possessor at his own discretion. This agitation was led, though unsuccessfully, by Rammohun Roy. Reg. III of 1828 is still in force.

Among the principal measures advocated in the *Raja's Questions and Answers on the Judicial System of India* were the substitution of English for Persian as the official language of the courts of law; the appointment of native assessors in the civil courts; trial by jury, of which the Panchayet system was the indigenous parallel; separation of the offices of judge and revenue commissioners; separation of the offices of judge and magistrate; codification of the criminal law and also of the law of India; and consultation with the local magnates before enacting laws. The last reform proposed contains the germs of representative legislative bodies.

Students of Indian economics are familiar with the fact that every year nearly 45 crores of rupees of India's capital is drained off to foreign parts without any hope of return. This drain of wealth did not escape the eyes of Raja Rammohun Roy. In his "Revenue System of India" he says that as a large sum of money is now annually drawn from India by Europeans retiring from it with the fortunes realized there, a system which would encourage Europeans of capital to become permanent settlers with their families, would necessarily greatly improve the resources of the country. He pre-

pared several tables to prove this drain. The following two paragraphs are appended to these tables :—

"By the evidence of Messrs. Lloyd and Melville (the former the Accountant-General, and the latter the Auditor-General of the East India Company), recorded in the Minutes of evidence taken before the Select Committee of the House of Lords, 23rd February, 1830, it appears that the proportion of the Indian revenues *expended in England* on the territorial account amounts, on an average, to £3,000,000 annually. It includes the expenses at the Board of Control and India House, pay, absentee allowances and pensions to Civil and Military officers in Europe for services in India, with interest of money realized there, &c., &c., besides £453,588 for territorial stores consigned to India.

"In a letter of the Court of Directors to the Government of Bengal, dated the 20th of June, 1810, and quoted in the work "On Colonial Policy as applicable to the Government of India," by a very able servant of the company, holding a responsible situation in Bengal, the Directors state that "it is no extravagant assertion to advance, that the annual remittances to London on account of individuals, have been at the rate of nearly £2,000,000 per annum *for a series of years past.*" (p. 70.) From these and other authentic documents the author calculates the amount of capital, or "the aggregate of tribute, public and private, so withdrawn from India from 1765 to 1820, at £100,000,000." (p. 65.)

It has already been incidentally shown that Raja Rammohun Roy was in favour of the settlement in India of European capitalists under certain conditions. Among the advantages likely in his opinion to arise from such settlement was the improvement of the condition of the native inhabitants by European landlords showing them superior methods of cultivation. That this was not altogether a vain expectation appears from some observations in Mr. N. G. Mukerji's *Hand-book of Indian Agriculture*. Says Mr. Mukerji :

Indeed, Indian agriculture has been actually vastly improved by our contact with the West. European planters have been the means of introducing important innovations. In the most out-of-the way places of India we find European planters carrying on agricultural experiments and improvements imperceptibly and noiselessly."

This naturally leads one to a consideration of the Raja's *Remarks on Settlement in India by Europeans*. It is a paper of rare personal and national importance. But as it raises problems of great magnitude, we refrain from dealing with it here. Suffice it to say that this his final literary deliverance holds up to the people of India the prospect of India having English as its *lingua franca*, India socially and in other respects westernized to some extent, India possibly independent and India the Enlightener of Asia.

Progressive political views imply confidence in the capacity of a people for continuous improvement. Raja Rammohun Roy believed that the people of India "have the same capability of improvement as any other civilized people." He did not believe that Asiatics were naturally an inferior race. In the course of one of his numerous religious controversies "A Christian" having indulged in a tirade

about persons being "degraded by Asiatic effeminacy," the Raja reminded him that almost all the ancient prophets and patriarchs venerated by Christians, nay, even Jesus Christ himself, were Asiatics.

On a perusal of the foregoing pages it will be found that with the exception of the agitation that has been going on for sometime past for the industrial regeneration of the country, Rammohun Roy laid the foundation of all the principal modern movements for the elevation of our people. Probably, as India is mainly an agricultural country and as in his days the pressure on land had not become abnormal owing to the indigenous industries not having disappeared then to the extent to which they have now declined, the industrial problem did not then press for solution with the same urgency as now. Nevertheless we find that the bearing of the system of caste on industrial prosperity did not escape the keen eyes of Rammohun : as No. VIII of his *Sambad Kanumudi* printed the "plea of a philanthropist, who observing the misery caused by prejudices of caste, urges the Hindus not to debar themselves thereby from mechanical pursuits, but to cultivate such arts as would tend to their comfort, happiness and independence."

We conclude this introduction with the following estimate of his personality by his biographer, the late Miss Sophia Dobson Collett, who, though an English woman and a trinitarian Christian, seems on the whole to have understood the meaning of his life pretty accurately :—

"Rammohun stands in history as the living bridge over which India marches from her unmeasured past to her incalculable future. He was the arch which spanned the gulf that yawned between ancient caste and modern humanity, between superstition and science, between despotism and democracy, between immobile custom and a conservative progress, between a bewildering polytheism and a pure, if vague, Theism. He was the mediator of his people, harmonizing in his own person, often by means of his own solitary sufferings, the conflicting tendencies of immemorial tradition and of inevitable enlightenment."

"He embodies the new spirit which arises from the compulsory mixture of races and faiths and civilizations,—he embodies its freedom of enquiry, its thirst for science, its large human sympathy, its pure and sifted ethics, along with its reverent but not uncritical regard for the past, and prudent, even timid, disinclination towards revolt. But in the life of Rammohun we see what we hope yet to have shown us in the progress of India, that the secret of the whole movement is religious. Amid all his wanderings Rammohun was saved by his faith. * * * * He was a genuine outgrowth of the old Hindu stock ; in a soil watered by new influences, and in an atmosphere charged with unwonted forcing power, but still a true scion of the old stock. The Rajah was no merely occidentalized-oriental, no Hindu polished into the doubtful semblance of a European. Just as little was he, if we may use the term without offence, a spiritual Eurasian. If we follow the right line of his development we shall find that he leads the way from the orientalism of the past, not to, but through Western culture, towards a civilization which is neither Western

nor Eastern, but something vastly larger and nobler than both. He preserves continuity throughout, by virtue of his religion, which again supplied the motive force of his progressive movement. The power that connected and restrained, as well as widened and impelled, was religion.

"Rammohun thus presents a most instructive and inspiring study for the New India of which he is the type and pioneer. He offers to the new democracy of the West a scarcely less valuable index of what our greatest Eastern dependency may yet become under the imperial sway of the British commonalty. There can be little doubt that, whatever future the destinies may have in store for India, that future will be largely shaped by the life and work of Rammohun Roy. And not the future of India alone. We stand on the eve of an unprecedented intermingling of East and West. The European and Asiatic streams of human development, which have often tinged each other before, are now approaching a confluence which bids fair to form the one ocean-river of the collective progress of mankind. In the presence of that greater Eastern question,—with its infinite ramifications, industrial, political, moral and religious,—the international problems of the passing hour, even the gravest of them, seem dwarfed into parochial pettiness. The nearing dawn of these unmeasured possibilities only throws into clearer prominence the figure of the man whose life-story we have told. He was, if not the prophetic type, at least the precursive hint, of the change that is to come."

QUESTIONS AND ANSWERS

ON THE

JUDICIAL SYSTEM OF INDIA

1. Question. *Have you observed the operation of the Judicial System in India?*

Answer. I have long turned my attention towards the subject, and possess a general acquaintance with the operation of that system, more particularly from personal experience in the Bengal presidency, where I resided.

2. Q. *Do you think that the system hitherto acted upon is calculated to secure justice?*

A. The judicial system established in 1793, by Lord Cornwallis, was certainly well adapted to the situation of the country, and to the character of the people as well as of the Government, had there been a sufficient number of qualified Judges to discharge the judicial office, under a proper code of laws.

3. Q. *Explain particularly in what points you consider the practical operation of the system defective.*

A. In the want of a sufficient number of judges and magistrates, in the want of adequate qualification in many of them to discharge the duty in foreign languages, and in the want of a proper code of laws, by which they might be easily guided.

4. Q. *Can you explain what evils result from the want of a greater number of judges?*

A. 1st: The courts being necessarily few in number in comparison to the vast territories under the British rule, many of the inhabitants are situated at so great a distance from them, that the poorer classes are in general unable to go and seek redress for any injury, particularly those who may be oppressed by their wealthier neighbours, possessing great local influence. 2ndly: The business of the courts is so heavy that causes often accumulate to such an extent, that many are necessarily pending some years before they can be decided; an evil which is aggravated by subsequent appeals from one court to

another, attended with further delay and increased expense. By this state of things wrong-doers are encouraged, and the innocent and oppressed in the same proportion discouraged, and often reduced to despair. 3rdly : Such a mass of business transacted in foreign languages being too much for any one individual, even the ablest and best-intentioned judge, may be disheartened at seeing before him a file of causes which he can hardly hope to overtake ; and he may therefore be thus induced to transfer a great part of the business to his native officers, who are not responsible, and who are so meanly paid for their services, that they may be expected to consult their own interests.

5. Q. *Will you inform us what evils arise from the want of due qualification in the judges ?*

A. It is but justice to state that many of the judicial officers of the company are men of the highest talents, as well as of strict integrity, and earnestly intent on doing justice. However, not being familiar with the laws of the people over whom they are called to administer justice by these laws, and the written proceedings of the court, answers, replies, rejoinders, evidence taken, and documents produced, being all conducted in a language which is foreign to them, they must either rely greatly on the interpretation of their native officers, or be guided by their own surmises or conjectures. In the one case, the cause will be decided by those who in point of rank and pay are so meanly situated, and who are not responsible to the government or public for the accuracy of the decision ; in the other case, a decision founded on conjecture must be very liable to error. Still, I am happy to observe that there are some judicial officers, though very few in number, whose judgment and knowledge of the native languages are such, that in cases which do not involve much intricacy and legal subtlety, they are able to form a correct decision independent of the natives around them.

6. Q. *Can you point out what obstructions to the administration of justice are produced by the want of a better code of laws ?*

A. The regulations published from year to year by the local government since 1793, which serve as instructions to the courts, are so voluminous, complicated, and in many instances, either too concise or too exuberant, that they are generally considered not a clear and easy guide ; and the Hindu and Mahomedan laws administered in conjunction with the above regulations, being spread over a great

number of different books of various and sometimes doubtful authority, the judges, as to law points, depend entirely on the interpretations of their native lawyers, whose conflicting legal opinions have introduced great perplexity into the administration of justice.

7. Q. *Is there any other impediment to the fair administration of justice besides these you have stated?*

A. The first obstacle to the administration of justice is, that its administrators and the persons among whom it is administered have no common language. 2ndly, That owing partly to this cause and also in a great measure to the difference of manners, &c., the communication between these two parties is very limited; in consequence of which the judges can with the utmost difficulty acquire an adequate knowledge of the real nature of the grievances of the persons seeking redress, or of the real character and validity of the evidence by which their claims are supported or opposed. 3rdly, That there is not the same relation between the native pleaders and the judge as between the British bar and the bench. 4thly, The want of publicity owing to the absence of reports and of a public press, to take notice of the proceedings of the courts in the interior: consequently there is no superintendence of public opinion to watch whether the judges attend their courts once a day or once a week, or whether they attend to business six hours or one hour a day, or their mode of treating the parties, the witnesses, the native pleaders or law officers, and others attending the courts—as well as the principles on which they conduct their proceedings and regulate their decisions; or whether in fact they investigate and decide the causes themselves, or leave the judicial business to their native officers and dependants. (In pointing out the importance of the fullest publicity being afforded to judicial proceedings by means of the press, I have no reference to the question of a free press, for the discussion of local politics, a point on which I do not mean to touch.) 5thly, The great prevalence of perjury, arising partly from the frequency with which oaths are administered in the courts, having taken from them the awe with which they were formerly regarded, partly from the judges being often unable to detect impositions in a foreign language, and to discriminate nicely the value of evidence amongst a people with whom they have in general so little communication; and partly from the evidence being frequently taken, not by the judge himself but by his native officers (Amlahs), whose good will is often secured beforehand by both

parties, so that they may not endeavour to detect their false evidence by a strict examination. Under these circumstances the practice of perjury has grown so prevalent that the facts sworn to by the different parties in a suit are generally directly opposed to each other, so that it has become almost impossible to ascertain the truth from their contradictory evidence. 6thly, That the prevalence of perjury has again introduced the practice of forgery to such an extent as to render the administration of justice still more intricate and perplexing. 7thly, The want of due publicity being given to the regulations which stand at present in place of a code of laws. From their being very voluminous and expensive, the community generally have not the means of purchasing them; nor have they a sufficient opportunity of consulting or copying them in the judicial and revenue offices where they are kept. As these are usually at a distance from the populous parts of the town, only professional persons or parties engaged in suits or official business are in the habit of attending these offices. 8thly, and lastly, Holding the proceedings in a language foreign to the judges, as well as to the parties and to the witnesses.

8. Q. *In what language are the proceedings of the courts conducted?*

A. They are generally conducted in Persian, in imitation of the former Muhammadan rulers, of whom this was the court language.

9. Q. *Are the judges, the parties, and the witnesses sufficiently well acquainted with that language to understand the proceedings readily?*

A. I have already observed that it is foreign to all these parties. Some of the judges, and a very few among the parties, however, are conversant with that language.

10. Q. *Would it be advantageous to substitute the English language in the courts, instead of the Persian?*

A. The English language would have the advantage of being the vernacular language of the judges. With regard to the native inhabitants, it would no doubt, in the meantime, have the same disadvantage as the Persian; but its gradual introduction in the courts would still, notwithstanding, prove ultimately beneficial to them by promoting the study of English.

11. Q. *Does the native bar assist the judge, and form a check on the accuracy of the decisions?*

A. It is no doubt intended to answer this most useful purpose, and does so to some extent; but, from the cause alluded to above

(Ans. 7, No. 3), not to the extent that is necessary to secure the principles of justice.

12. Q. *Do the judges treat the native pleaders with the consideration and respect due to their office?*

A. They are not always treated in the inferior courts with the consideration due to their office.

13. Q. *To what do you attribute it that the bar is not treated with respect?*

A. The native pleaders are so unfortunately situated from there being such a great distance between them and the judges who belong to the rulers of the country, and from not being of the same profession, or of the same class as the judges, and having no prospect of promotion as English barristers have, that they are treated as an inferior *caste* of persons.

14. Q. *Do not the native judicial officers employed under the judge assist him in his proceedings?*

A. Of course they assist him, and that very materially.

15. Q. *What kind of assistance do they render to the judge?*

A. They read the proceedings, viz. bill (darkh'ast, or arzi), answers, replies, rejoinders, and other papers produced in the court; they write the proceedings and depositions of the witnesses; and very often, on account of the weight of business, the judge employs them to take the depositions of the witnesses; sometimes they make abstracts of the depositions and other long papers, and lay them before the judge for his decision.

16. Q. *Are they made responsible with the judge for the proceedings held?*

A. They are responsible to the judge, but not to the government or the public.

17. Q. *Are not the judges assisted also by Hindu and Muhammedan lawyers, appointed to act as interpreters of the law?*

A. They are: learned natives of this description being attached to the courts to give their opinion on the Hindu and Muhammedan law points which may arise in any case.

18. Q. *Are natives of the country empowered to decide causes of any description?*

A. Yes: there are native Munsifs, or commissioners, for the decision of small debts; and Sudder Ameens who are authorised to

try causes under five hundred rupees, whether connected with landed or moveable property.

19. Q. *Are they qualified to discharge the duties entrusted to them?*

A. Many of them are fully qualified; and if proper care can be taken in the selection, all the situations might be filled with well-qualified persons.

20. Q. *What is your opinion of the general character and conduct of the judges in their official capacity as such?*

A. I am happy to state that in my humble opinion the judicial branch of the service is at present almost pure; and there are among the judicial servants of the Company gentlemen of such distinguished talents, that from their natural abilities, even without the regular study of the law, they commit very few, if any, errors in the administration of justice. Others are not so well gifted, and must therefore rely more on the representations of their native officers, and being free from any local check on their public conduct, their regularity, attention to business, and other judicial habits, are not equal to the wishes of their employers, nor calculated to give general satisfaction.

21. Q. *Do they borrow money to any extent from the natives?*

A. Formerly they borrowed to a great amount; at present this practice is discouraged.

22. Q. *Why are the natives prevailed upon to lend to the judges, and other civilians, money to such an extent?*

A. Natives not having any hope of attaining direct consideration from the Government by their merits or exertions, are sometimes induced to accommodate the civil servants with money, by the hope of securing their patronage for their friends and relatives, the judges and others having many situations directly or indirectly in their gift; sometimes by the hope of benefiting by their friendly disposition when the natives have estates under their jurisdiction; and sometimes to avoid incurring the hostility of the judge, who, by Regulation IX of 1807, is empowered not only to imprison, but inflict corporal punishment, by his own authority under certain legal pretences on any native, whatever his respectability may be.

23. Q. *What is your opinion of the judicial character and conduct of the Hindu and Muhammedan lawyers attached to the*

A. Among the Muhammadan lawyers I have met with some honest men. The Hindu lawyers are in general not well spoken of, and they do not enjoy much of the confidence of the public.

24. Q. *What is your opinion of the official character and conduct of the subordinate native judicial officers?*

A. Considering the trifling salaries which they enjoy, from 10, 20, 30, or 40 rupees to 100 rupees a month (the last being the allowance of the head native officer only), and the expenses they must incur, in supporting some respectability of appearance, besides maintaining their families; (the keeping of a palankeen alone must cost the headman a sum of between 20 and 30 rupees per month), and considering also the extent of the power which they must possess, from their situations and duties as above explained (Q. 15.), and the immense sums involved in the issue of causes pending in the courts, it is not to be expected that the native officers, having such trifling salaries, at least many of them, should not avail themselves sometimes of their official influence, to promote their own interests.

25. Q. *What is your opinion of the professional character and conduct of the pleaders?*

A. Many pleaders of the Sudder Dewany Adawlut are men of the highest respectability and legal knowledge, as the judges are very select in their appointment, and treat them in a way which makes them feel that they have a character to support. Those of the provincial courts of appeal are also generally respectable, and competent to the discharge of their duties. In the Zillah courts some respectable pleaders may also be met with, but proper persons for that office are not always very carefully selected; and in general, I may observe, that the pleaders are held in a state of too much dependence by the judges, particularly in the inferior courts, which must incapacitate them from standing up firmly in support of the rules of the court.

26. Q. *Is bribery and corruption ever practised in the judicial department, and to what extent?*

A. I have already intimated my opinion in the answer to Questions 20 and 24.

27 and 28. Q. *Have the respectable and intelligent native inhabitants generally confidence in the purity of the Company's courts and the accuracy of their decisions: and have the native community confidence in the integrity of the subordinate judicial officers?*

A. Whilst such evils exist as I have above noticed, in my reply to Queries 5, 6, and 7, as well as to Queries 20 and 24, the respectable and intelligent native inhabitants cannot be expected to have confidence in the general operation of the judicial system.

29. Q. *Are the judges influenced in their decision by their native officers?*

A. Those who are not well versed in the native languages, and in the Regulations of government, must necessarily be very much dependent on their native officers, as well as those who dislike to undergo the fatigue and restraint of business, which to Europeans is still more irksome in the sultry climate of India.

30. Q. *Can you suggest any mode of removing the several defects you have pointed out in the judicial system?*

A. As European judges in India are not generally expected to discharge judicial duties satisfactorily, independent of native assistance, from not possessing a thorough knowledge of the languages, manners, customs, habits, and practices of the people, and as the natives who possess this knowledge have been long accustomed to subordination and indifferent treatment, and consequently have not the power of commanding respect from others, unless joined by Europeans, the only remedy which exists, is to combine the knowledge and experience of the native with the dignity and firmness of the European. This principle has been virtually acted upon and reduced to practice since 1793, though in an imperfect manner, in the constitution of the courts of circuit, in which the Mufti (native assessor) has a voice with the judge in the decision of every cause, having a seat with him on the bench. This arrangement has tolerably well answered the purpose of government, which has not been able to devise a better system in a matter of such importance as the decision of questions of life and death, during the space of forty years though it has been continually altering the systems in other branches. It is my humble opinion, therefore, that the appointment of such native assessors should be reduced to a regular system in the civil courts. They should be appointed by government for life, at the recommendation of the Sudder Dewany Adawlut, which should select them carefully, with a view to their character and qualifications, and allow them to hold their situations during life and good behaviour, on a salary of from 300 to 400 rupees per mensem. They should be responsible to the government as well as to the public for their decisions, in the same manner as the European

judges, and correspond directly with the judicial secretary. A casting voice should be allowed to the European judge, in appointing the native officers, in case of difference of opinion; the native assessor, however, having a right to record his dissent. These assessors should be selected out of those natives who have been already employed for a period of not less than five years as assessors (Mufti), lawyers (Zillah Court Maulavis), or as the head native officers in the judicial department.*

Par. 2. This measure would remove the evils pointed out in the answers to Q. 5 and to Q. 7, Nos. 1, 2 and 3, and also afford a partial remedy to the evils noticed in Nos. 5, 6 and 8 of Answer 7, as well as provide against the evils referred to in answer to Query 24.

Par. 3. In order, however, to render the administration of justice efficient and as perfect as human efforts can make it, and to remove the possibility of any undue influence which a native assessor might attempt to exercise on the bench under a European judge of insufficient capacity, as well as to do away the vexatious delays and grievous suffering attending appeals, it is necessary to have recourse to trial by jury, as being the only effectual check against corruption, which, from the force of inveterate habit, and the contagion of example, has become so notoriously prevalent in India. This measure would be an additional remedy to the evils mentioned in the reply to Query 5 and 7, Nos. 1, 2, 3, and 5, 6, 8, and also in the replies to Query 4, Nos. 2 and 3, as well as in Query 24.

Par. 4. With a view to remove the evils arising from want of publicity of the Regulations, as noticed in No. 7 of Answer to the Query 7, two or three copies in each of the principal native languages used in that part of the country should be kept in a building in the populous quarter of the town, under the charge of a keeper on a small salary, and all persons should be freely admitted to read and copy them at leisure from sunrise to sunset. The expense of this would not amount to two pounds a month for each station, and the benefits of it would be incalculable.

Par. 5. In order to remedy the evils arising from the distance of the courts as noticed at Question 4th Answer No. 1, I beg to suggest as follows: The Sudder Ameen, or superior commissioners for the decision of causes under 500 rupees, affecting moveable or immoveable property, are at present stationed at the same place where

* The native judicial officers are generally versed in Persian, and therefore the proceedings hitherto generally held in that language would be familiar to them.

the zillah judge holds his court, and complaints are at first laid before the judge, who turns them over to one of these commissioners at his own discretion; consequently they afford no remedy for the great distance of the courts from many under their jurisdiction, as this often embraces a circle of 60 or 80 miles. I therefore propose that these Sudder Ameeris should be stationed at proportionate distances in different parts of the district, so that suitors may not have to travel far from their homes to file their bills and afterwards to seek and obtain justice; and that one of the assistants of the judge should be stationed in a central position which might enable him (without any additional charge to government as I shall hereafter show) to visit and personally superintend these Ameeris, when the judge's station is on or near the border of his district. If it is otherwise situated, one of the assistants of the judge may remain at the head station with the judge, and superintend the commissioners nearest to him, while another assistant being stationed at an appropriate distance, may superintend those who are more remotely situated from the first assistant. There will thus be as complete a check over them as under the present system, and justice will be brought home to the doors of a great majority of the inhabitants of each district, since causes under 500 rupees are exceedingly numerous in every Zillah or City Court.

Par. 6. These assistants may, at the same time, be very usefully employed in checking the dreadfully increasing crime of forgery, by which the course of justice is now so very much impeded in the judicial courts. Written documents of a diametrically opposite nature are, as is well known, constantly laid before these courts, and serve to confound justice and perplex a conscientious bench. Therefore under the proposed system of assistant judges' courts in two different quarters of a district, I would recommend, as highly necessary and expedient to check materially the practice of forgery, that parties to any deed should be required, in order to render the same valid, to produce it in open court before the nearest assistant judge, within a certain number of days from the time of its execution. This rule should apply^c to all sorts of deeds, contracts and agreements regarding property above 100 rupees in value, such as wills and bills of sale, &c., and money bonds for debts payable at a certain period beyond six months, and upon receiving a fee of from one to two rupees,

^c By Regulation XXXVI of 1793, the registering of deeds is authorised, but left in the option of the parties.

according to its importance, the assistant judge, after ascertaining the identity of the parties in open court, should immediately affix his signature as witness to the deed and retain a copy of the same in a book of record kept on purpose, duly authenticated and marked to prevent the possibility of interpolation, or any other species of fraud. The sum above allowed as a fee on registering, with a small fixed charge per page for retaining a copy, would be more than sufficient to remunerate any extra trouble attending the duty and the labour of transcribing. To induce the proprietors of land and other respectable persons to appear without reluctance in open court on such occasions, they should be invariably treated with the respect due to their rank. Further to encourage the public to have papers registered, and to satisfy the government that no improper delay takes place in registering them, as well as to prevent the copyists from extorting perquisites, a book should be kept in which the party presenting a paper should in open court enter a memorandum of the day and hour on which he presented it for registration, and of the day and hour when it was produced and returned to him. This system would materially remedy the evil referred to in answer to Q. 7, No. 6.

Par. 7. The assistant judges should also receive appeals from the Sudder Ameens, and try them in conjunction with a native assessor appointed by the Sudder Dewany Adawlut, on a salary smaller than that of the judges' assessor, that is, perhaps not exceeding 200 rupees a month. In the event of difference of opinion between the assessor and the assistant judge on any case, it should be appealable to the Zillah judge, whose decision should be final; and as the Sudder Ameens are now paid from the duties on the stamps used and the fees received on the papers filed, so the assistant judges' assessor may be paid in the same manner from the fees and stamps imposed on the appeal causes.

Par. 8. The assistant judge, though not empowered to interfere with the police officers of the interior in the discharge of their duties, should notwithstanding be authorised to receive written complaints of any abuse of their power from persons who feel themselves oppressed by the police, and to forward the same to the head magistrate of the district for his investigation; as very often the poor villagers or peasants are oppressed by the local police officers, but despair of any relief, from being unable to leave their homes and travel to a distance to the station to seek redress.

31. Q. *Is trial by jury (or any thing resembling it) resorted to at present in any case?*

A. The principle of justice under certain modifications has from the most remote periods been well understood in this country under the name of Panchayet.

32. Q. *What is the difference between the Jury system and the Panchayet?*

A. The Panchayet exists on a very defective plan at present, because the jurors (members of the Panchayet) are not regular in their meetings, have no power to compel the attendance of witnesses, unless by appealing to the court; they have no judge to preside at their meetings and direct their proceedings, and are not guarded in any manner from partiality or private influence. They are in fact at present only arbitrators appointed by the court with consent of the parties in a cause, each party nominating one arbitrator and the judge a third; and sometimes both parties agree to refer the decision of the case to one arbitrator.

33. Q. *Why and when was the Panchayet system discouraged?*

A. It has not been totally discouraged, but rather placed on a different footing. In former days it was much more important in its functions. It was resorted to by parties at their own option, or by the heads of tribes, who assumed the right of investigation and decision of differences; or by the government, which handed over causes to a Panchayet.

34. Q. *Do you really think the introduction of any system of Jury trial or Panchayet would be beneficial?*

A. Undoubtedly, as shewn by the 3rd Par. of my answer to Question 30. Since a Panchayet composed of the intelligent and respectable inhabitants, under the direction of a European judge to preserve order, and a native judge to guard against any private influence, is the only tribunal which can estimate properly the whole bearings of a case, with the validity of the documentary evidence, and the character of the witnesses, who could have little chance of imposing false testimony upon such a tribunal.

35. Q. *Do you think it would be acceptable to the inhabitants?*

A. As the Panchayet even in its present very imperfect form is still practised by the inhabitants, it would without doubt be much more so, were it reduced to a regular system, guarded by proper

checks, and dignified by judicial forms, which would inspire the whole community with higher respect and confidence for this ancient institution. But whatever length its popularity may go, it is the only system by which the present abuses consisting of perjury, forgery, and corruption can be removed.

36. Q. *Will you explain, in detail, the modification of the Punchayet-jury system which you think best suited to the circumstances of the country?*

A. I am of opinion that the Punchayet system should be adopted in conjunction with the plan above stated. (Q. 30.) It would be easy to adapt it to the object in view, without imposing any heavy duty on the respectable portion of the native community. Three jurymen, or at most five, would, I conceive, answer the purpose as well as a greater number, and any zillah (district) could easily supply a list from which these might be taken without inconvenience. Three times the number required for sitting on a trial should be summoned, and the persons actually to serve should be taken by lot, so that neither the judges nor the parties may be able to know beforehand what persons will sit on the trial of a cause. The general list of jurymen should be as numerous as the circumstances of the city or zillah (district) will admit. It should be prepared by the European judge at the station, and altered and amended by him from time to time as may seem proper and requisite. He may easily select well qualified juries from respectable and intelligent natives known to be versed in judicial subjects, who reside in considerable numbers at every station. A necessary concomitant to the introduction of jurymen will be the sole use of the vernacular dialect of the place to the exclusion of the Persian language in proceedings. Publicity should be as much fostered as possible, and the jury should be kept apart and required to decide without separating, as in the English courts of law. In a trial thus conducted the resort to appeal will cease to be useful, and for the purposes of justice, need only be allowed where there is a difference of opinion betwixt the bench and the jury. For, where judge and jury are unanimous, an appeal would be more likely to produce injustice by vexatious expense and delay, than to rectify error on the part of the inferior court, and ought therefore to be prohibited.

37. Q. *Do you think the natives of the country qualified to discharge judicial functions of this nature, and from what class would you select the jurors?*

A. They are assuredly qualified, as I observed before, in answer to Query 19, and the jurors at present may be judiciously selected from retired pleaders (*wakils*) and retired judicial officers, from agents employed by private individuals to attend the court (*mukhtars*) who are generally well qualified, and from the other intelligent and respectable inhabitants as above observed (Answer to Q. 30 and 36.) To avoid any undue bias or partiality, both parties in a suit should have a right of objecting to any juryman, who can be shewn to have an interest in the cause, or particular connection with either party.

38. Q. *Do you think the natives competent and eligible to all judicial situations, or only subordinate ones?*

A. As many of them, even under the present manifold disadvantages, already discharge all the judicial functions, even the most arduous (see Q. 15.), it will not be very difficult, I think, with proper management, to find qualified persons amongst the natives for any duty that may be assigned to them. Many, however, as in other countries, are only fit for subordinate situations.

39. Q. *What advantage do you conceive this Puuchayet-jury system would possess over the judicial system now established?*

A. First, from the thorough knowledge of the native character possessed by such a tribunal, and of the language of the parties and witnesses, it would not be so liable to error in its decision. Secondly, the jury would be guarded from undue influence by the judge and his assessors. Thirdly, it would guard the assessor from the use of undue influence. Fourthly, it would secure the dispatch of business, and the prevention of delay, and of the need of appeals. The checking of perjury and forgery may also reasonably be hoped from it, besides many other advantages already pointed out.

40. Q. *Are the provincial courts of appeal conducted on the same principles as the district courts to which you have referred?*

A. As they are presided over by gentlemen of more experience and longer residence in the country, these courts are generally conducted with greater regularity.

41. Q. *What is the nature of the difference existing between them?*

A. Under the Bengal Presidency, in causes above 10,000 rupees, the action must be laid in the provincial court of appeal, and may be decided by one judge. This court takes cognizance also of any case of inferior amount below 10,000 rupees, which may be carried to it

by appeal from the decision of or proceedings held by, the judge of the city or district court, and from these provincial appeal courts, appeals can only be made to the Sudder Dewany Adawlut, the highest civil tribunal.

42. Q. *Can you point out any defects in the Sudder Dewany Adawlut, and their remedies?*

A. Government has always been very careful in its selection of judges for the Sudder Dewany Adawlut, both as regards their ability and integrity; and they are fully competent to remove any defects which may exist in the court over which they preside. It is, however, highly desirable that judges of the Sudder Dewany Adawlut should have the power of issuing the writ of habeas corpus, on seeing sufficient grounds for the exercise of this peculiar power, according to the practice of the English courts. But when the person imprisoned is situated at a greater distance from the Sudder courts than fifty miles, the judges of this court, to save useless expense, might direct one of the circuit judges, on whom they could best rely, to investigate the case, and report to them.

43. Q. *What other duties are assigned to the judges of the provincial courts?*

A. They are a medium of communication between the Sudder Dewany Adawlut and the inferior courts, and are also judges of circuit.

44. Q. *How many provincial courts are there?*

A. There are six provincial courts in the provinces attached to the Bengal Presidency, viz., that of Calcutta, Dhacca, Moorshedabad, Patna, Benares, and Bareilly.

45. Q. *Are not the judges of the provincial courts still judges of circuit?*

A. No: they were so formerly; but about two years ago the local government transferred the duties of judges of circuit from them to the revenue commissioners.

46. Q. *Does any inconvenience arise from making the revenue commissioners also judges of circuit?*

A. Such an union of offices is quite incompatible and injurious. The judge of circuit discharges duties of the highest importance, being invested with the power of life and death, and imprisonment during life in chains, the infliction of corporal punishment, and the confiscation of property. He is, besides, charged with the preserva-

tion of peace and good order in several extensive districts ; and it is morally impossible, therefore, that he can fulfil the expectation of Government and the public, if his attention be at the same time engrossed and distracted by political, commercial, or revenue transactions. In criminal suits, moreover, he labours under a peculiar disadvantage, not being assisted by a bar composed of persons of liberal education, or by a body of honest, intelligent and independent jurors. The former often proves of essential service to the bench in the king's court, by able expositions of the law as applicable to every case, by great acuteness in cross-examining witnesses, and in the detection of false evidence ; while the importance of the jury is universally acknowledged.

Par. 2. Formerly, when the judges of the provincial courts of appeal did the duties of the circuit, one or two of them used to remain at the station, to attend to the necessary current business, while the others, (one, or sometimes two) were on circuit. But on the present system, the commissioner of revenue being also judge of circuit, when he goes on circuit, all references to him, by the collectors under his jurisdiction, often remain unanswered, and the most important matters in the revenue business are entirely suspended for months together. Although the former Mohammedan governments were subject to the charge of indifference about the administration of justice, they yet perceived the evils liable to arise from an union of revenue and judicial duties. No judge or judicial officer empowered to try capital crimes (as Cazees or Muftis), was ever suffered to become a collector of revenue.

Par. 3. The separation of these two offices has also been established by long practice under the British government, being one of the leading principles of the system introduced by Lord Cornwallis. Accordingly those young civilians who attached themselves to the revenue line of the service, have advanced by successive steps in that line ; while those again who preferred the judicial, have been in like manner continued and promoted through the different grades in that department of public duty. Therefore, by overturning this system, a gentleman may now be appointed to discharge the highest judicial duties, who never before tried the most trivial cause ; and another to superintend the collectors of revenue, to whose duties he has been all his life a stranger. Mr. E. R. Barwell, Revenue Commissioner and Judge of Circuit of the 24-Purgunnahs, Baraset, Jessore and Burrisal,

is an example of the former case; and Mr. H. Braddon, Revenue Commissioner and Judge of Circuit of Burdwan, Jungul Muhal, and Hooghly, is an instance of the latter.*

Par. 4. The remedy I beg to propose, without further expense attending the establishment, is to separate the duties between two distinct sets of officers, and double the jurisdiction of each. By this arrangement each gentleman discharging one class of duties would find them more easy and simple, though the field embraced was more extensive, and the expense would be the same as under the present system.

Par. 5. The duties of judges and magistrates are not so incompatible as those of the judges of circuit and the commissioners of revenue; but still separation of these duties is advisable on account of the great weight of the business in the Zillah and city courts. Therefore these two offices (the office of judge and that of magistrate) should be exercised by different individuals. However, the magistrates should assist the judges in the execution of their decrees or orders as they have hitherto done in those districts where the offices of judge and magistrate are separate.

47. Q. *What delay generally takes place in the decision of causes?*

A. In the Zillah courts a cause may be pending on an average about two or three years; in the courts of appeal four or five years; and in the Sudder Dewany Adawlut the same period. But if the property in dispute amount to the value of about 50,000 rupees, so as to admit of an appeal to the king in council, the probable period of delay in the decision of such an appeal is better known to the authorities here than to myself.

48. Q. *What is the cause of such delay?*

A. It must be acknowledged that irregularity in attending the discharge of the judicial duties, and the want of proper discipline or control over the judicial officers are the main causes of obstruction in the dispatch of the judicial business; and these daily growing evils in every branch of the judicial establishment have, in a great measure, defeated the object which the government had in view in establishing it. For example, a bill of complaint written on stamp, the first paper in a suit, cannot easily be got on the file unless it be accompanied with some perquisite to the native recorder, whose duty

* Vide the Directories containing the list of civil servants in Bengal.

it is to ascertain, first, whether the sum in dispute correspond with the value of the stamp, an act which may be accomplished in a minute or a week, just as it suits the inclination of the examiner. The case is the same with respect to the issuing of the summonses prepared by another native officer, to command the attendance of the person sued, either in person or by a pleader to put in his answer. Summonses, subpoenas, and the processes of the provincial courts are issued against individuals through the judge of the district in which they reside, and a certain period is always allowed for serving these processes; but neither are the Zillah judges, whose time is otherwise fully occupied, punctual in observing those subordinate duties, nor does the higher court, which is occupied by other important business, take any early notice of the expiration of the time allowed for making the return. The parties are therefore obliged to cultivate a friendly understanding not only with the officers of the provincial court, but also with those of the Zillah or city court. Whether the defendant attends immediately or long after the time allowed him, or whether he files his answer within the regular prescribed period, or a year afterwards, is treated as if practically immaterial. But delay unintentionally allowed to the parties in filling the requisite papers and in producing their documents and witnesses, is the too frequent source of great abuses; as the opportunity thus afforded by delay is embraced to invent stories and forge documents in support of them, to procure false witnesses and to instruct them in the manner that appears best calculated to serve the purposes in view.

Par. 2. Moreover, some of the judges are very irregular in calling on causes, choosing any day and any time that suits their convenience to occupy the bench singly. The pleaders, being natives of the country, have little or no influence over the conduct of the judges to prevent such irregularities, and dare not hint dissatisfaction.

Par. 3. I would suggest, with a view to remove irregularities originating in a want of official control, without disregard to economy, that the head writer in each court be required to discharge this duty with some extra remuneration for the same, and be made strictly responsible under an adequate penalty, with proper sureties for his conduct, liable, jointly with him, for any fine he may incur, by want of punctuality proved against him by either party, on complaint to the judge of the court, or of a superior court, or to the judicial secretary.

Par. 4. This superintendent or clerk of the papers should be required to place on the file in open court bills of complaint as well as answers and replies, &c., within the period prescribed in Regulation IV of 1793. These should not be admitted to the records after the time allowed, unless the judge, on motion publicly made, find sufficient reason for prolonging the period, say a week or two in particular cases.

Par. 5. The clerk of the papers should vigilantly watch that no delay takes place in issuing summonses, subpoenas, and other process of the court; and that the day on which these are ordered to be issued, and the day on which their return is expected should be correctly registered in a separate book kept on purpose.

Par. 6. In case of neglect or wilful disobedience, the superintendent of the papers should immediately submit the circumstance to the notice of the judge. Should the neglect be on the part of the prosecutor, the judge ought immediately to pronounce nonsuit, and if on the part of the defendant, proceed *ex parte* without allowing the neglect to be remedied. Or if the judge do not attend to these rules, the clerk of the papers should be bound to report the circumstance to the superior court, or the judicial secretary on pain of forfeiting his situation. A separate register of the returns should also be kept, as well as a register shewing the time when the defendant's answer must be filed—say one month from the day when the summonses are served, as is the case with equity suits in Calcutta; also shewing the hours during which the judge may attend on public duty, and likewise his occasional absence from court with the alleged cause thereof. The superintendent should transmit monthly a copy of each register, with his own remarks, to government through the secretary in the judicial department, for its particular attention to every breach of regularity therein mentioned.

Par. 7. With a view to the same end, every person who chooses should have a right to be present during the trial of causes in any court: the courts, as is generally the case at present, should be so constructed as to afford facilities for a considerable number of persons hearing and witnessing the whole proceedings: any one who chose should be entitled to make notes of the same and publish them, or cause them to be published, in any manner he may think proper for general information, subject to prosecution for intentional error or misrepresentation that might be judicially proved against him before

a competent tribunal, and to incur such penalty as it might award. This measure would tend to remove the evil pointed out in answer to Query 7, No. 4

49. Q. *What number of causes may be pending at one time, and undisposed of in the district courts and courts of appeal?*

A. This depends partly on the comparative degree of industry and attention to business bestowed by the judicial officers, partly on the extent of the district, and amount of business within the jurisdiction of the respective courts. However the average number of causes pending may be ascertained by a reference to the registers kept, which are not at present accessible to me. My impression is that in some districts they are very numerous. But to shew how much the vigilance and activity of a public officer may accomplish, even in so extensive a district as Hooghly, I may mention that there, under Mr. D. C. Smith, every case is decided in the course of four, five or six months. In the courts of appeal the causes pending are very numerous. Conscientious and active as Mr. Smith is, he is often obliged, from the pressure of business, judicial and magisterial, to authorise his native judicial officers to take the depositions of witnesses in the civil suit.

50. Q. *Could the number of appeal cases be reduced without any disadvantage?*

A. Yes, certainly not only without disadvantage but with great positive advantage. 1st, By introducing a more regular system of filing papers and bringing on causes, as above suggested, in answer to Q. 48. 2nd, By the aid of a jury and joint native judge, as proposed in reply to Q. 30. 3rd, By allowing of no appeal unless when there is a difference of opinion in the zillah or city court in giving sentence, as noticed in reply to the Query 36. By these means the business would be at once conducted with more accuracy; so many litigious suits would not occur; and there would be very little need of appeals to revise the decisions.

51. Q. *Has the right of appeal to the King in Council proved beneficial or otherwise?*

A. Owing to the vast distance, the heavy expense, and the very great delay which an appeal to England necessarily involves, owing also to the inaccuracies in the translations of the papers prepared after decision and sent to this country, and to other causes, I think the right of appeal to the king in council is a great source of

evil and must continue to be so, unless a specific court of appeal be created here expressly for Indian appeal causes above 10,000*l*. At the same time to remove the inaccuracies above noticed, three qualified persons (a European, a Mussalman, and a Hindu) should be nominated joint translators, and the translations should be furnished within one year from the conclusion of the proceedings in India, and both parties should be allowed to examine the accuracy of the translations thus prepared.* But if the appellant neglect to pay the fees of translation within two months after the decision, the appeal should be quashed.

52. Q. *What is the nature of the duties assigned to the revenue commissioners?*

A. They exercise a general superintendence and control over the revenue collectors, with powers similar to those vested in the board at Calcutta, formerly called the board of revenue, and in the board of commissioners for the upper provinces. That board at Calcutta is now the superior authority to which an appeal may be made from the decisions of the present commissioners, (it is in consequence now generally termed the Sudder or supreme board), and thence to the government itself. In other words the office of commissioner is a substitute for the board of revenue, but an appeal being allowed from the one to the other, of course there is abundance of appeals, and a great part of the business is thus transacted twice or thrice over.

53. Q. *What is the nature of the duties assigned to them as judges of the circuit?*

A. As judges of circuit they exercise control over the magistrates and try the higher classes of criminal causes, which involve a question of life or death, or to the Sudder Nizamut Adawlat, the highest criminal tribunal.

54. Q. *Does not the discharge of one class of duties interfere with the discharge of another class, which seems to be of a very different nature?*

* In noticing this circumstance, I by no means intend to make the least insinuation to the prejudice of the present translators: but make the statement from my own observation of various translations, and my own experience of the great difficulty or rather impracticability, of rendering accurately large masses of documents from an oriental tongue, and frequently a provincial dialect, into a European language, of which the idioms are so widely different, unless the translator be assisted by persons possessing peculiar vernacular knowledge of the various localities.

A. As above noticed (Ans. to Q. 46), while they are engaged in the duties of their circuit court, the reports and references from the revenue collectors must remain for several months unanswered; and not only do the people suffer in consequence, but the public business stagnates, as already observed.

55 and 56 Q. *What is the nature of the functions of the judge of circuit, and his native law assessor? Do they afford each other reciprocal assistance in the discharge of their duties?*

A. Both take cognizance of the charges brought before the magistrates and sent to their court; both hear the evidence and examine the witnesses, and both give their voice in passing the decision, as I observed in Par. 1st, of my Ans. to Q. 30. In a vague sense the Mohammedan law assessor may be considered as analogous to the jury in English courts, while the European judicial officer is the judge.

57. Q. *Are the judges generally competent to the discharge of their duties?*

A. Some of them are highly qualified; but it is not expected that European judges should be generally competent to determine difficult questions of evidence among a people whose language, feelings, and habits of thinking and acting are so totally different from their own.

58. Q. *Are the native law assessors generally competent?*

A. They are generally so: some of the Muftis Mussulman law assessors) are men of such high honour and integrity, that they may be entrusted with the power of a jury with perfect safety; and they are all of the most essential utility, and indeed the main instrument for expediting the business of the criminal courts. However highly or moderately qualified the European judges may have been, the business has been advantageously conducted through the assistance and co-operation of these Mohammedan assessors for a period of 40 years past.

59 Q. *If they should differ in opinion, what course is adopted?*

A. The case is then referred to the Nizamut Adawlat (the highest criminal tribunal).

60. Q. *What course do the judges of the Nizamut Adawlat adopt?*

A. If the judge of the supreme criminal court, before whom the referred case comes, should, after consulting with the Muftis of that court, concur in the opinion of the circuit judge, his decision is confirmed and carried into execution. But should the Sudder Nizamut (supreme criminal) judge differ from the opinion of the circuit judge,

the case is then submitted to a second, or if necessary, to a third Sudder Nizamut judge, and the opinion given by two Sudder judges against one, is final.

61. Q. *Are the judges of the supreme criminal court also judges of the highest civil court?*

A. Yes; and very deservedly

62. Q. *Are they generally competent to the discharge of their duties?*

A. I have already observed (Q. 42.) that they are highly competent.

63. Q. *As it is of the highest importance that the courts of circuit should be above all corruption; can you suggest any means of improving them?*

A. Courts which have the disposal of life and death are undoubtedly of very high importance; and I would therefore propose instead of only one law assessor (who stands in place of a jury) that three or five (at least three) law assessors should be attached to each court, while trials are going on.

64. Q. *From what class of men would you select the juries in the criminal courts?*

A. The criminal law now established in India has been very judiciously founded on the Mohammedan criminal law. It has however been so greatly modified by the acts of government from time to time since 1793, that it, in fact, constitutes a new system of law, consisting partly of its original basis, and partly of the government regulations. But it has been made a regular study only by the respectable Mohammedans, who, when they attain a certain proficiency, are styled Maulvies, a term equivalent to Doctors of Law. Formerly two of these were attached to each court of circuit, and one to each district court. Of late the office of Maulvi of circuit having been abolished, the Maulvi or Mufti of the Zillah (district) court has been ordered by government to officiate as Mufti of circuit, while the judge of circuit is engaged in the trial of the criminal causes of that district. Thus he alone, as assessor of the judge of circuit, is entrusted with the powers usually assigned to a jury in a British court; having the power of delivering his opinion on every case at the close of the trial.

Par. 2 With a view to lessen the abuse of the great power thus given, it is highly desirable that government should adopt the

following precaution : The judge of circuit previous to his departure for any Zillah (district) or city to try criminal causes, should summon, through the magistrate, one or two additional Maulvis attached to the adjacent courts, with a few other learned, intelligent and respectable inhabitants of that district or city, to join him on his arrival with a moderate extra allowance for their services, and every morning before he takes his seat on the bench, the judge should, without previous intimation, direct three of them to sit with him during the whole trials that may come on for that day as his law assessors and they should be required to deliver their opinions in each case in open court, immediately after the close of the proceedings, without previous opportunity of communicating with any one whatever, on the same principle as an English jury : and the judge should immediately inform the parties of the verdict, to put an end to all intrigues. The judge of circuit should also be required to keep a vigilant watch over the proceedings of the magistrates within his jurisdiction, and to institute an investigation personally and on the spot, into any complaint preferred against them, whenever he sees sufficient ground for adopting this prompt measure ; and the judge of circuit only should have the power of inflicting corporal punishment ; not any magistrate as injudiciously authorised by Regulation IX of 1807, Sec. 19th.

65. Q. *What would be their duty ? Precisely like that of a jury, or like that of the law assessors as hitherto employed ?*

A. More resembling that of the law assessors as hitherto employed. The difference between them is not important, and the result would be the same.

66. Q. *Should not the jury be selected from persons of all religious sects and divisions ?*

A. Since the criminal law has hitherto been administered by the Mohammedans ; to conciliate this class, the assessors should still be selected from among them, until the other classes may have acquired the same qualifications, and the Mohammedans may become reconciled to co-operate with them.

67. Q. *Do you think any alteration necessary in the system of criminal law now established ?*

A. As the criminal laws now established are already in general very familiar to the natives, I think they may better remain in their present state, until the government may be able to introduce a regular code.

68. Q. *In what manner do you think a code of criminal law could be framed suitable to the wants of the country?*

A. A code of criminal law for India should be founded as far as possible on those principles which are common to, and acknowledged by all the different sects and tribes inhabiting the country. It ought to be simple in its principles, clear in its arrangement, and precise in its definitions; so that it may be established as a standard of criminal justice in itself, and not stand in need of explanation by a reference to any other books of authority, either Mohammedan or Christian. It is a subject of general complaint that persons of a certain high rank, however profligate some of them may be, are, from political considerations, exempted from the jurisdiction or control of the courts of the law. To remedy this inconvenience, in the proposed code, so as to give general satisfaction, without disregarding the political distinctions hitherto observed, it may perhaps be expedient for government to order such persons to be tried by a special commission, composed of three or more persons of the same rank. This very regulation, when once known to them, would, in all probability, deter them from committing any very gross act of tyranny or outrage upon their dependants or others.

69. Q. *What period of time would it take to frame such a code, and by whom could it be done satisfactorily?*

A. It must require at least a couple of years to do it justice; and it ought to be drawn up by persons, thoroughly acquainted with Mohammedan and Hindu law, as well as the general principles of British law.

70. Q. *Are the judges capable of regulating their proceedings by such a code of laws?*

A. At present they are not generally capable of performing their judicial duties independent of the aid of the assessors; but with a proper code, as above supposed, they might, most of them, in no great period, by making it a regular study, become much more capable of administering justice by it than they are by the present system.

71, 72. Q. *Would not the detention of the young civilians in England to obtain a regular legal education be injurious by delaying their proceeding to India for several years, at that period of life, when they are best capable to acquire the native languages? Do you conceive that any disadvantages arise from civilians going out at an early age?*

A This is a subject which merits the deepest consideration of the legislature. Young men sent out at an early age, before their principles are fixed, or their education fully matured, with the prospect of the highest power, authority, and influence before them, occupying already the first rank in society immediately on their arrival, and often without the presence of any parent, or near relative to advise, guide or check them, and surrounded by persons ready, in the hope of future favours and patronage, to flatter their vanity and supply money to almost any extent to their too easily excitable passions—are evidently placed in the situation calculated to plunge them into many errors, make them overstep the bounds of duty to their fellow creatures and fellow subjects, and to relax whatever principles of virtue may have been implanted in their yet inexperienced minds. The excuse made for so injudicious an arrangement, that it is favourable to the acquisition of the native languages, is of no weight; for it may be observed that the missionaries, who are usually sent out at the age of from 25 to 35 years, acquire generally in two or three years so thorough a knowledge of these languages as to be able to converse freely in them and even to address a native audience with fluency in their own tongue. In fact the languages are easily acquired at a mature as well as at an immature age by free communication with the people. Moreover, by the system of native assessors, juries and other helps to the judges and magistrates, and by the gradual substitution of English for Persian, as above proposed, so extensive and minute a knowledge of the native languages would not be requisite. In short, from the present system of sending out youths at so early an age, very serious evils arise to themselves, as well as to the Government, and to the public. 1st, With respect to themselves, they are too often seduced into habits which prove ruinous to their health and to their fortunes, becoming thereby involved in debts from which many of them are never afterwards able to extricate themselves without having recourse to improper means. 2ndly, These embarrassments interfere very seriously with their duty to Government and the public, as the persons to whom they are indebted generally surround them, and seize every opportunity of enriching themselves which their situation and influence put in their way. 3rdly, Their indiscreet choice of native officers from youthful partialities, and the thoughtless habits acquired in early days, amid power and influence, prove very injurious to the community. Therefore

to civil servant should be sent to India under 24 or at least 22 years of age, and no candidate among them should be admitted into the judicial line of the service, unless he can produce a certificate from a professor of English law to prove that he possesses a competent knowledge of it. Because, though he is not to administer English law, his proficiency therein will be a proof of his capacity for legal studies and judicial duties, and a knowledge of the principles of jurisprudence as developed in one system of law will enable him to acquire more readily any other system; just as the study of the ancient and dead languages improves our knowledge of modern tongues. This is so important, that no public authority should have the power of violating the rule, by admitting to the exercise of judicial functions any one who has not been brought up a lawyer.

73. Q. *How are the laws of inheritance regulated?*

A. The property of Mohammedans descends and is divided according to their own law of inheritance; and the property of Hindus according to theirs; and of other sects also agreeably to their respective laws of inheritance.

74. Q. *What books do the Hindu lawyers officially attached to the courts follow as law authorities?*

A. There are various books, but in Bengal they chiefly follow the Dayabhaga, with occasional reference to other authorities; and in the western province, and a great part of the Dakhan they follow the Mitakshara principally.

75. Q. *What books do the Mohammedan lawyers follow as authorities?*

A. The majority of the Mussulmans of Hindustan follow the doctrines of Abu Hanifah and his disciples; consequently the Hidayah is their chief law authority; but they also refer to some other books of decision or cases such as the Fatawae Alamgiri and others.

76. Q. *Is there any mode by which the law authorities, now so voluminous and perplexing, might be simplified in such a manner as to prevent the native lawyers from misleading the courts, and confounding the rights of property?*

A. To effect this great and pre-eminently important object, a code of civil law should be formed on similar principles to those already suggested for the criminal code, and this, as well as the former, should be accurately translated, and published under the authority of government. By printing off large impressions, and

distributing them, at prime cost, in the current languages of the people, they might render the rights of property secure ; since, these being clear and well-known to the whole community, it would be impossible for any designing man to induce an intelligent person to enter upon litigious suits. The law of inheritance should, of course, remain as at present with modifications peculiar to the different sects, until by the diffusion of intelligence the whole community may be prepared to adopt one uniform system. At present when a new regulation, drawn up by any officer of government and submitted to it, is approved of, it immediately becomes law when promulgated, the same as an act of parliament in this country, when approved of, discussed, and sanctioned by king, lords and commons. From the want of sufficient local knowledge and experience on the part of the framers of such regulations, they are often found not to answer in practice, and the local government is thus frequently obliged to rescind the whole or part of them. I would therefore suggest that if any new regulation be thought necessary before the completion of the civil and criminal codes above proposed, great care and precaution should be observed in its enactment. With this view every such project of law before it is finally adopted by the government, should be printed and a copy sent directly from Government, not only to the judges of the *Sudder Dewany Adawlat*, and the members of the Board of Revenue, &c., but also to the advocate-general on the part of the Honourable Company, to the principal Zamindars, such as the Rajas of Burdwan, Behar, Benares, &c., and to the highly respectable merchants such as Jagat Set at Murshedabad, Baboo Baijnath at Patna, and the representatives of Baboo Manohar Dass at Benares, also to the Muftis of the *Sudder Dewanny Adawlat*, and the head native officers of the Boards of Revenue, for their opinion on each case of the Regulation to be sent in writing within a certain period. Because these being the persons who are affected by the Regulations, they will be cautious of recommending any that is injurious. It should still be optional, however, with government to be guided or not by their suggestions. But a copy of the minutes made by the different parties abovenamed should accompany the Regulations, when these are to be transmitted to England for the consideration of the court of directors, and parliament ; and there should be a standing committee of the House of Commons,

¹ In the case of those parties who do not understand English, the draft regulations, when sent to them, should be accompanied with a translation.

to take the whole regulations and minutes into consideration, and report to the House from time to time on the subject, for their confirmation or amendment.

In such matters as those of war and peace, it may be necessary that the local government should act on its own discretion and responsibility according to existing circumstances, notwithstanding the opinion of the government in England. But as the affairs of India have been known to the authorities in Europe, for such a series of years, in matters of legislation, the local government should be bound to carry into effect any regulations or order in judicial and revenue matters sent out, formally enacted by the British government, or the Court of Directors under the express sanction of the Board of Commissioners for the control of the affairs of India, although the local Government might still remonstrate against them to the home authorities.

The attention thus shewn by the government at home and abroad, to the feelings and interests of the Zamindars, and merchants, as principal members of the community, though it would not confer upon them any political power, would give them an interest in the government, and inspire them with greater attachment to it, and also the whole community, as being under their influence, and in general receiving its opinions from them

77. Q. *Should the civil servants, in the judicial, and revenue departments, be educated expressly for the particular line of the service in which they are engaged, or is it advantageous to transfer them from one branch of it to another?*

A. It is found by experience that persons, by long habit in the performance of any particular duties, become not only more dexterous in but more reconciled and even attached to them, and find them less irksome than others to which they have not been accustomed. In my humble opinion, the duties of a judge are not inferior in difficulty to those of any other profession whatever, nor is the qualification requisite for them to be acquired with less experience. It has been alleged that the revenue officers, when converted into judicial officers, must be better judges of revenue causes. But on this principle, commercial officers ought to become judges for the sake of commercial causes, agriculturists for agricultural causes, and mechanists for mechanical disputes. However, as matters of revenue, commerce, agriculture, &c., are decided on the general principles of law and

justice, any such special preparation has never been found necessary : therefore these two classes of duties should be kept quite distinct, if it is wished that either of them be performed well.

78. Q. *Can you offer any other suggestions for the improvement of the Judicial Establishment ?*

A. 1st. In order to keep the judicial officers above temptation, their salaries should not be reduced. 2ndly. With the additional aids and checks of joint native judges, assessors, and juries above proposed, (Ans. to Q. 30.) all civil courts of appeal may be dispensed with, except the supreme civil court (Sudder Dewany Adawlat), and thus a very considerable saving may be effected by the government. One-tenth of this saving will suffice to support all the native assessors, juries, &c., above recommended (Q. 30). 3rdly, By gradually introducing the natives into the revenue departments under the superintendence of European officers, (as I proposed in my Appendix A, on the revenue system), and in the judicial department in co-operation with them, the natives may become attached to the present system of government, so that it may become consolidated, and maintain itself by the influence of the intelligent and respectable classes of the inhabitants, and by the general good will of the people, and not any longer stand isolated in the midst of its subjects, supporting itself merely by the exertion of superior force.

Par. 2. Should the gradual introduction of the natives into places of authority and trust as proposed, be found, not to answer the expectations of Government, it would then have the power of stopping their farther advancement, or even of reversing what might have been already done in their favour. On the contrary, should the proposed plan of combining Native with European officers have the effect of improving the condition of the inhabitants and of stimulating them with an ambition to deserve the confidence of the government, it will then be enabled to form a judgment of the practicability and expedience of advancing natives of respectability and talent to still higher situations of trust and dignity in the state, either in conjunction with or separately from their British fellow subjects.

Par. 3. In conclusion, I deem it proper to state, that in preparing my replies to these queries, I have not been biassed by the opinions of any individual whatsoever ; nor have I consulted with any person or even referred to any work which treats on the subject of India. I have for the facts consulted only my own recollections ; and

in regard to the opinions expressed, I have been guided only by my conscience, and by the impressions left on my mind by long experience and reflection. In the improvements which I have ventured to suggest, I have kept in view equally the interests of the governors and the governed; and without losing sight of a just regard to economy, I have been actuated by a desire to see the administration of justice in India placed on a solid and permanent foundation.

(Sd.) RAMMOHUN ROY

LONDON, *Sep. 19th, 1831*

QUESTIONS AND ANSWERS

ON THE

REVENUE SYSTEM OF INDIA.

1. *Question. By what tenure is land held in the provinces with which you are acquainted?*

Answer. In the provinces of Bengal, Behar, and part of Orissa (*Midnapoor*), land is now held by a class of persons called *Zamindars* i. e. landholders), who are entitled to perpetual hereditary possession, on condition of paying to government a certain revenue, fixed on their respective lands. This is termed the *Zamindary* system. But in the ceded and conquered provinces belonging to the Presidency of Fort William, no fixed agreement has yet been made with the *Zamindars* as to the amount of assessment. Consequently their estates are not in their own hands, but under the immediate management of government, and subject to fresh assessments from time to time at its discretion.

In the Madras Presidency, the revenue is for the greater part, collected directly from the cultivators (called *Ryots*), by the government revenue officers, according to the rate fixed on the different descriptions of land in various situations. These cultivators may retain possession as long as they pay the revenue demanded from them.

2. *Q. By what tenure was land held under the former government?*

A. Under the Mohammedan government, lands were held by hereditary right on the *Zamindary* system (though the revenue was sometimes arbitrarily increased); and the *Zamindars* were considered as having a right to their respective estates, so long as they paid the public revenue. They were at the same time responsible for any breach of the peace committed within the limits of their estates. In this manner many estates, some of which can yet be referred to, such as *Vishnupoor*, *Nuddea*, &c., continued in the same family for several centuries.

3. Q. *Do persons of all religious sects hold by the same tenure?*

A. No religious or other distinctions were observed under the former government in regard to the holding of land; at present, Europeans are interdicted by law from becoming proprietors of land, except within the jurisdiction of the British courts of law at the three presidencies, Calcutta, Madras and Bombay.

4. Q. *Are the estates most usually large or small?*

A. In the Bengal presidency the estates are many of them considerable, and there are many others of various smaller dimensions; but in the Madras presidency, where the revenue is collected directly from the cultivators, the district is generally divided into small farms.

5. Q. *Do the proprietors cultivate their own estates, or let them to tenants?*

A. To the best of my knowledge, almost all the land in the Bengal presidency is let out by the proprietors in farms, on a larger or smaller scale.

6. Q. *On what terms are the farms rented?*

A. The farms are frequently rented by the Zamindar himself to cultivators, often on lease, for payment of a certain fixed rent, and frequently the Zamindar lets the whole, or a great part of his Zamindari to respectable individuals, who realize the rents from the cultivators according to the contracts previously made with them by the Zamindars, or subsequently by these middlemen.

7. Q. *Does the ordinary rate of rent seem to press severely on the tenants?*

A. It is considered in theory that the cultivator pays half the produce to the landholder, out of which half, 10-11ths or 9-10ths constitute the revenue paid to Government, and 1-10th or 1-11th the net rent of the landholder. This half of the produce is a very heavy demand upon the cultivator, after he has borne the whole expense of seed and labour; but in practice, under the permanent settlement since 1793, the landholders have adopted every measure to raise the rents by means of the power put into their hands.

8. Q. *Under the former government had the cultivator any right in the soil to cultivate in perpetuity on paying a fixed rent not subject to be increased?*

A. In former times *Khud-Kasht Ryots* (i. e. cultivators of the lands of their own village) were considered as having an absolute

right to continue the possession of their lands in perpetuity on payment of a certain fixed rent, not liable to be increased. But under an arbitrary government, without any regular administration of justice, their acknowledged rights were often trampled upon. From a reference to the laws and the histories of the country, I believe that lands in India were individual property in ancient times. The right of property seems, however, to have been violated by the Mohammedan conquerors in practice; and when the British power succeeded that of the Mohammedans, the former naturally adopted and followed up the system which was found to be in force, and they established it both in theory and practice.

9. Q. *Are the tenants now subjected to frequent increase of rent?*

A. At the time when the permanent settlement was fixed in Bengal (1793), government recognized the *Zamindars* (landholders) as having alone an unqualified proprietary right in the soil, but no such rights as belonging to the cultivators (*Ryots*). (Vide Regs. I and VIII of 1793, the foundation of the perpetual settlement.) But by Art. 2, S. 60 of Reg. VIII of 1793, government declared, that no one should cancel the *Pattahs* (i. e., the title deeds), fixing the rates of payments for the lands of the *Khud-Kasht Ryots* (peasants cultivating the lands of their own village), "except upon proof that they had been obtained by collusion," or "that the rents paid by them within the last three years had been below the *Nirrh-bundee* (general rate) of the *Purgannah*," (particular part of the district where the land is situated) or "that they had obtained collusive deductions," or "upon a general measurement of the *Purgannah* for the purpose of equalizing and correcting the assessment. In practice, however, under one or other of the preceding four conditions, the landholders (*Zamindars*), through their local influence and intrigues, easily succeeded in completely setting aside the rights, even of the *Khud-Kasht* cultivators, and increased their rents.

10. Q. *In what manner was the revenue assessed by Government upon each estate, and upon what principle at the time of the permanent settlement?*

A. In the province of Bengal at the time of the permanent settlement, (in 1793) the amount of the revenue which had been paid on each estate (*Zamindari*) in the preceding year was taken as a standard of assessment, subject to certain modifications. Estates (*Tauluks*) which had paid a revenue directly to Government for the

twelve years previous without fluctuation, were to be assessed at that rate, and the principle of that assessment was considered to be nearly one-half of the gross produce. In Behar and other places the gross amount of the rents arising from an estate was fixed upon as the rate of government assessment, allowing, however, a deduction of ten per cent. to the landholder (*Zamindar*), in the name of proprietor's dues (*Malikanah*), and also something for the expense of collecting the rents, &c. In the upper provinces attached to the Bengal presidency, as before observed, no settlement has yet been concluded with the *Zamindars* (*landholders*). The estates (*Zamindaris*) are sometimes let out by government to the highest bidder, to farmers of revenue on leases of a few years, and in other cases the rents are collected from the cultivators by the government officers.

11. Q. *On what principle do the proprietors of land regulate the rate of rent paid by the tenants?*

A. The different fields or plots of ground on an estate are classed into 1st, 2nd, 3rd, and 4th quality, and certain rates per *bigah* (a well-known land measure in India) are affixed to them respectively, agreeable to the established rates in the district. These rates are considered as a standard in settling the rent to be paid by the cultivators. But as the precise quality of land is always liable to dispute, and fields may be classed in the first, second, third, or fourth quality according to the discretion of the *Zamindars* or government surveyors, and the measurement is also liable to variation through the ignorance, ill-will, or intentional errors of the measurers—there is *in practice* no fixed standard to afford security to the cultivators for the rate or amount of rent demandable from them, although such a standard is laid down *in theory*.

12. Q. *Is the rent any specific proportion of the gross produce of the land?*

A. In theory the rent is estimated, as I before observed, at half the gross produce of the land; it is often increased however much beyond that amount by various means; but in places peculiarly subject to have the crops destroyed by sudden inundation, or any other casualty, villagers cultivate generally on condition of receiving half the gross produce and delivering the other half to the landlord (*Zamindar*).

13. Q. *Is the rent paid in money, in agricultural produce, or in labour?*

A. The rent is generally paid in money, except under peculiar circumstances, when the agreement is to pay half the gross produce as rent. And it is sometimes paid by labour, when some of the villagers enter the service of the landlord (*Zamindar*) on condition of holding certain lands in lieu of their services.

14. Q. *If in money or produce, at what period of the year, and in what proportion?*

A. The money rent is usually paid by monthly instalments, the earliest payments being made when the harvest is realized: and the payment in produce is of course exclusively at that season.

15. Q. *Is the revenue in many instances collected by government directly from the cultivators, and not from the proprietors, or any set of middlemen?*

A. Yes; very commonly in the Madras presidency, and sometimes in the ceded and conquered upper provinces, as above observed (Question 10). Also when lands advertised for sale, in order to realize arrears of revenue, do not find purchasers, they may remain temporarily in the hands of government.

16. Q. *In the event of a proprietor or cultivator falling into arrear in his instalments of revenue, what means are adopted by the government for realizing it?*

A. Various modes have been adopted, but the usual mode now allowed, with respect to landholders (*Zamindars*) is, that at the expiration of every third month of the revenue year, should any balance of revenue remain unpaid, the estate in arrear may be advertised for sale.

17. Q. *Is the person of the proprietor liable to be arrested for the revenue?*

A. Should the arrear of revenue due not be realized by the sale of the estate, the person of the proprietor may be seized.

18. Q. *What proportion of the revenue may fall into arrear in one year, or what proportion of the land may be subject to legal process by the public authorities for its recovery?*

A. Perhaps two-fifths, or one-half of the whole revenue are usually in arrear, on an average, taking the whole year round, and more than one-half of the estates are advertised for sale every year, but comparatively few are actually sold, as many of the proprietors contrive, when pressed by necessity, to raise the money by loan or otherwise.

19. Q. *In the event of the tenants falling into arrear with their rent, what means do the proprietors adopt for realizing it?*

A. They distrain their moveable property with some exceptions by the assistance of the police officers, and get it sold by means of the judicial authorities.

20. Q. *Do the courts afford the same facilities to the proprietors for recovering their rents, as to the government for realizing its revenue?*

A. When the revenue of an estate falls into arrear, the government by its own authority sells the property. But the proprietor cannot sell the property of a cultivator, except by the means of the judicial authority, which however generally expedites the recovery of such balances.

21. Q. *In the event of a sale of land for revenue, what mode does the collector adopt in bringing it to sale?*

A. When, at the end of the revenue quarter or year as before explained, a balance remains due, a notice is put up in the collector's office (Cutcherry) announcing that the lands are to be sold, unless the balance of revenue be paid up within a certain period. On the expiration of this period the lands may be sold to the highest bidder at public auction by the collector, under the sanction of the Board of Revenue.

22. Q. *What period of indulgence is given to the defaulter before the sale takes place?*

A. A space of from one month to six weeks, and not less than the former period from the time of advertising is allowed for paying up the arrears before the sale can actually take place.

23. Q. *What previous warning is given to him to pay up his arrears, what length of notice of the intended sale is given to the public, and in what mode is the notice published?*

A. First the collector sends a written order to the defaulting landholder, demanding payment of the arrears due. Failing this, a catalogue of the various estates for sale is inserted in the government gazette, and the particulars of each are advertised in the office of the collector, and of the judicial court and the Board of Revenue.

24. Q. *What class of persons become the principal purchasers?*

A. Frequently other landlords become purchasers, and sometimes the proprietors themselves in the name of a trusty agent. Sometimes persons engaged in trade, and sometimes the native revenue officers in the name of their confidential friends.

25. Q. *What proportion of the land is purchased by the revenue officers?*

A. The proportion purchased by the revenue officers is now comparatively very small.

26. Q. *Do they conduct the sales fairly or turn their official influence to their own private advantage?*

A. As such publicity is not given to the notices of sales as the local circumstances require, native revenue officers have sometimes an opportunity, if they choose, of effecting purchases at a reduced price; since the respectable natives in general, living in the country, are not in the habit of reading the government gazette, or of attending the public offices; and in respect to estates of which the business is transacted by agents, by a collusion with them the estates are sometimes sold at a very low price.

27. Q. *Can you suggest any plan for obviating abuses of this kind?*

A. 1st, The advertisements or notices of sale should first be regularly sent to the parties interested at their own residences, not merely delivered to their agents. 2ndly, They should be fixed up not only in the government offices, but at the chief market places and ferries (ghats) of the district; also in those of the principal towns, such as Calcutta, Patna, Murshedabad, Benares, Cawnpore. 3rdly, The police officers should be required to take care that the notices remain fixed up in all these situations from the first announcement till the period of sale. 4thly, The day and hour of sale being precisely fixed, the biddings for an estate should be allowed to go on for a specific period—not less than five minutes—that all intending purchasers may have an opportunity of making an offer; and the lapse of that period should be determined by a proper measure of time, as a sand-glass placed on the public table for general satisfaction.

28. Q. *When a cultivator fails to pay his rent, does the proprietor distrain or take possession of the tenant's moveables by his own power, or by applying to any legal authority?*

A. Already answered. (See Ques. 19.)

29. Q. *Does the legal authority seize upon both the moveable and immoveable property, and the person of the tenant for his rent?*

A. 1st, On a summary application to the police, the moveable property of the tenant, with some exceptions, is distrained by the help of the police officers; 2ndly, by the ordinary judicial process,

the immoveable property of the tenant may be attached, and the person arrested for the recovery of the rest.

30. Q. *What is the condition of the cultivator under the present Zamindari system of Bengal, and Ryotwary system of the Madras Presidency?*

A. Under both systems the condition of the cultivators is very miserable; in the one, they are placed at the mercy of the Zamindar's avarice and ambition; in the other, they are subjected to the extortions and intrigues of the surveyors and other government revenue officers. I deeply compassionate both; with this difference in regard to the agricultural peasantry of Bengal that there the landlords have met with indulgence from government in the assessment of their revenue, while no part of this indulgence is extended towards the poor cultivators. In an abundant season, when the price of corn is low, the sale of their whole crops is required to meet the demands of the landholder, leaving little or nothing for seed or subsistence to the labourer or his family.

31. Q. *Can you propose any plan of improving the state of the cultivators and inhabitants at large?*

A. The new system acted upon during the last forty years, having enabled the landholders to ascertain the full measurement of the lands to their own satisfaction, and by successive exactions to raise the rents of the cultivators to the utmost possible extent, the very least I can propose and the least which government can do for bettering the condition of the peasantry, is absolutely to interdict any further increase of rent on any pretence whatsoever; particularly on the consideration to allow the present settled and recognized extent of the land to be disturbed by pretended remeasurements; as in forming the Permanent Settlement (Reg. 1 of 1793, Sec. 8, Art. 1), the government declared it to be its right and its duty to protect the cultivators as being from their situation most helpless, and "that the landlord should not be entitled to make any objection on this account." Even in the Regulation (VIII of 1793, Sec. 60, Art. 2), the government plainly acknowledged the principle of the *Khud-kasht* cultivators having a perpetual right in the lands which they cultivated, and accordingly enacted, that they should not be dispossessed, or have their title deeds cancelled, except in certain specified cases applicable, of course, to that period of general settlement (1793), and not extending to a period of forty years afterwards. If goven,

ment can succeed in raising a sufficient revenue otherwise by means of duties, &c., or by reducing their establishments particularly in the revenue department, they may then, in the districts where the rents are very high, reduce the rents payable by the cultivators to the landholders, by allowing to the latter a proportionate reduction. On this subject I beg to refer to a paper (Appendix A) which I drew up some time before leaving Bengal, which, with some additional hints and quotations, is subjoined.

32. Q. *Are the Zamindars in the habit of farming out their estates to middlemen in order to receive their rents in an aggregate sum, authorizing the middlemen to collect the rent from under-tenants; and if so, how do the middlemen treat the cultivators?*

A. Such middlemen are frequently employed, and are much less merciful than the Zamindars.

33. Q. *When the cultivators are oppressed by the Zamindars or middlemen, are the present legal authorities competent to afford redress?*

A. The judicial authorities being few in number, and often situated at a great distance, and the landholders and middlemen being in general possessed of great local influence and pecuniary means, while the cultivators are too poor and too timid to undertake the hazardous and expensive enterprize of seeking redress, I regret to say that the legal protection of the cultivators is not at all such as could be desired.

34. Q. *Can you suggest any change in the revenue or judicial system which might secure justice and protection to the cultivators against the oppression of the Zamindars, middlemen, or officers of government?*

A. I have already suggested (see Q. 31) that no further measurement or increase of rent on any pretence whatever should be allowed; 2ndly, Public notices in the current languages of the people, stating these two points, should be stuck up in every village, and the police officers should be required to take care that these notices remain fixed up at least twelve months; and to prevent any infringement thereof, on receiving information of any attempt at remeasurement on the part of any landholder (Zamindar), &c. 3rdly, Any native judicial commissioner for small debts (Munsif) who is authorized to sell distrained property for the recovery of rent, should be required not to proceed to sale unless fully satisfied that the demand of the Zamindar had not exceeded the rate paid in the preceding year; and if not satisfied of this, he should immediately release the property by application to the police. 4thly, That the judge or magistrate be

required to hold a court one day in the week for cases of this kind, and, on finding any *Zamindar* guilty of demanding more than the rent of the preceding years, should subject such offender to a severe fine; and on discovering any police officer or native commissioner guilty of connivance or neglect, he should subject them to fine and dismissal from the service. 5thly, The judge or magistrate in each district should be directed to make a tour of the district once a year, in the cold season in order to see that the above laws and regulations for the protection of the poor peasantry are properly carried into effect. 6th, and lastly, The collector should be required to prepare a general register of all the cultivators, containing their names, their respective portions of land, and respective rents as permanently fixed according to the system proposed.

35. Q. *Is the condition of the cultivators improved within your recollection of the country?*

A. According to the best of my recollection and belief, their condition has not been improving in any degree.

36. Q. *Has the condition of the proprietors of land improved under the present system of assessment?*

A. Undoubtedly: their condition has been much improved, because, being secured by the permanent settlement against further demands of revenue, in proportion to the improvement of their estates, they have in consequence brought the waste lands into cultivation, and raised the rents of their tenantry, and thus increased their own incomes, as well as the resources of the country.

37. Q. *Has the government sustained any loss by concluding the permanent settlement of 1793 in Bengal, Behar, and part of Orissa without taking more time to ascertain the net produce of the land, or waiting for further increase of revenue?*

A. The amount of assessment fixed on the lands of these provinces at the time of the permanent settlement (1793), was as high as had ever been assessed, and in many instances ulgner than had ever before been realized by the exertions of any government, Mohammedan or British. Therefore the government sacrificed nothing in concluding that settlement. If it had not been formed, the landholders (*Zamindars*) would always have taken care to prevent the revenue from increasing by not bringing the waste lands into cultivation, and by collusive arrangements to evade further demands; while the state of the cultivators would not have been at all better

than it is now. However, if the government had taken the whole estates of the country into its own hands, as in the ceded and conquered provinces and the Madras Presidency then, by allowing the landholders only ten per cent. on the rents (Malikanah), and securing all the rest to the government, it might no doubt have increased the revenue for a short time. But the whole of the landlords in the country would then have been reduced to the same wretched condition as they are at present in the ceded and conquered provinces of the Bengal Presidency or rather annihilated, as in many parts of the Madras territory; and the whole population reduced to the same level of poverty. At the same time, the temporary increase of revenue to government under its own immediate management would also have soon fallen off, through the misconduct and negligence of the revenue officers, as shewn by innumerable instances in which the estates were kept *khas*, i. e., under the immediate management of government.

38. Q. *Why are lands so frequently sold for arrears of revenue, and transferred from one set of hands to another?*

A. For ten or twelve years after the introduction of the permanent settlement, the old *Zamindars*, from adhering to their ancient habits of managing their estates by agents, and neglecting their own affairs, very soon lost a great part of their lands and some the whole; the purchasers, by their active exertions and outlay of capital, improved many of their estates, and increased their own fortune: but many of their heirs and successors again becoming less active and more extravagant, by rivalry with each other in nuptial entertainments, funeral rites, and other religious ceremonies, frequently ran into debt, and brought their estates again into the market.

39 and 40. Q. *Do the lands sold for arrears usually realize the revenue claimed by government, and fetch their full value? If not, what is the cause of the depreciation?*

A. They generally realize the revenue due from them; not always, however, as they are sold sometimes even below the amount of arrears due by the proprietors, owing to the want of due publicity and consequent absence of competitors; or to collusive sales of the estates as before observed (see Ans. to Quest. 26).

41. Q. *After the sale of the lands, should the arrears not be realized, does the government seize upon the person of the proprietor?*

A. Yes: the government seizes his person, and any other property government may discover him to be possessed of, is sold.

42. Q. *If so, is there any limit to his confinement, except payment of the debt?*

A. There is no specified limit to the best of my recollection; but after government is satisfied that he has given up all his property, he may obtain his release from its humanity.

43. Q. *Have the cultivators any means of accumulation capital under the present system?*

A. Certainly not: very often when grain is abundant, and therefore cheap, they are obliged, as already observed, to sell their whole produce to satisfy the demands of their landholders, and to subsist themselves by their own labour. In scarce and dear years they may be able to retain some portion of the crop to form a part of their subsistence, but by no means enough for the whole. In short, such is the melancholy condition of the agricultural labourers, that it always gives me the greatest pain to allude to it.

44. Q. *When the government makes an assessment on the fields of the cultivators by means of numerous subordinate officers, is there any effectual mode of preventing collusion, embezzlement or oppression in the valuing and measuring of the lands?*

A. I think it is almost impossible under that system, carried on, as it must be, by means of a vast number of individuals who are generally poor, and have no character to support. From their mismanagement not only the cultivators suffer, but ultimately the government itself, from the falling off in the revenue, under a system that at once presses down the people and exhausts the resources of the country. However, if the government would take the survey and assessment of one of the preceding years as a standard, and prevent any future measurement and assessment, it would relieve the cultivators, from the apprehension of further exactions,* and the collector or the registrar of the district should be authorized to grant reduction to any cultivator subjected to overmeasurement on being petitioned, and on personally ascertaining such to have occurred.

45. Q. *Are collectors generally competent to superintend personally the revenue affairs of the district?*

A. From the heat of the climate, and from the difficulty of transacting business in a language which is foreign to them, the

* Since writing the above, I happened to meet with a gentleman from Madras, of high talents and experience, who maintained that no further measurements or assessments are at all allowed in the provinces belonging to that presidency. I felt gratified at the intelligence, and shall feel still more so to find it confirmed by the Regulations of government.

collectors in general for the above reasons, must stand in need of aid from others, whom they employ as instruments in conducting the details. At the same time they have so little intercourse or acquaintance with the native inhabitants, that they must naturally depend chiefly on two or three persons who are around them, in whom they generally place confidence, and consequently these few who have no chance of bettering their condition from the trifling salaries allowed them, sometimes consult their own interests, rather than those of the government or the people.

46. Q. *Are the Collectors vested with sufficient power to perform effectually the duties attached to their office, or do they enjoy authority of an extent to be injurious to the public?*

A. Their powers are amply sufficient. The judicial authorities also are always required by the regulations of government to afford them promptly every necessary assistance in the discharge of their duties, and many collectors are even invested with the additional office and powers of magistrates; contrary to the judicious system established by Lord Cornwallis, and to the common principles of justice, as they thus become at once parties and judges in their own case; consequently such powers very often prove injurious to those who attempt to maintain their own right against the claims of government, whose agents the collectors are. I much regret such a wide deviation in principle from the system of Lord Cornwallis; as I think that system, with such modifications and improvements as time may suggest, should be maintained as the basis of the revenue and judicial system of India.

47. Q. *Can you suggest any improvement which might secure the revenue to government and protection to the people?*

A. The regulations already in force are fully adequate to secure the government revenue. But to secure the people against any unjust exactions on the part of the revenue officers, I would propose, first, that the collectors should not by any means be armed with magisterial powers. Secondly, that any charge against the revenue officers should be at once investigated by the judicial courts to which they are subject, without reference to the number of cases on the file of the court, as has been the practice with regard to causes in which the collectors are prosecutors; so that both parties may have an equal chance of legal redress. This, under existing circumstances, seems to be the best remedy that presents itself; but with the present system, I must repeat my fears that redress will not always be attainable.

48. Q. *Would it be injurious or beneficial to allow Europeans of capital to purchase estates and settle on them?*

A. If Europeans of character and capital were allowed to settle in the country, with the permission of the India board, or the Court of Directors, or the local government, it would greatly improve the resources of the country, and also the condition of the native inhabitants, by shewing them superior methods of cultivation, and the proper mode of treating their labourers and dependants.

49. Q. *Would it be advantageous, or the reverse, to admit Europeans of all descriptions to become settlers?*

A. Such a measure could only be regarded as adopted for the purpose of entirely supplanting the native inhabitants, and expelling them from the country. Because it is obvious that there is no resemblance between the higher and educated classes of Europeans and the lower and uneducated classes. The difference in character, opinions and sentiments between Europeans and the Indian race, particularly in social and religious matters, is so great, that the two races could not peaceably exist together, as one community, in a country conquered by the former, unless they were gradually assimilated by constant intercourse, continued and increased for a long period of years, under a strong and vigorous system of police, in every village, large or small; an establishment so expensive, however, that the present revenues of India could not support it. Such assimilation has in some measure taken place at Calcutta, from the daily communication of many of the respectable members of both communities. Yet even in that capital, though the seat of government, and numerous police officers are placed at almost every hundred yards, the common Europeans are often disposed to annoy the native inhabitants. By the above statement I do not mean to convey that there are not any honest and industrious persons among the European labourers. On the contrary I believe that amongst the very humblest class of society such characters are numerous. But even in justice to them, I deem it right to state that without capital, they could not, in a hot country, compete with the native labourers, who are accustomed to the climate, and from their very different habits of life with regard to food, clothes and lodging, can subsist on at least one-sixth, if not one-tenth of what is required by an European labourer. Consequently the latter would not find his situation at all improved. but the very reverse by emigrating to India

50. Q. *Would the judicial system as at present established, be sufficient to control the European settlers in the interior of the country?*

A. At present British-born subjects are not amenable to the Company's courts, except as regards small debts under 500 rupees (about £50) and for petty cases of assault. Consequently under the present regulations, the courts as now established, are by no means competent to exercise any adequate control over British-born subjects in the interior.

51. Q. *Would it be advisable to extend the jurisdiction of the king's courts already established at the presidencies, or to augment their number; or to give greater power to the Company's judges over the European settlers?*

A. If the expenses attending the king's courts could be reduced to a level with the costs of the Company's courts, it would be useful and desirable to increase the number of such courts to the same extent as that of the Company's courts of appeal at present; if Europeans of respectability are permitted freely to settle in the interior. But should such reduction of expense be impracticable, it seems necessary in that event to extend the power of the Company's courts under the judicial servants of the Company. In the latter case these judicial servants should be regularly educated as barristers in the principles of British law; or the British settlers must consent to be subject to the present description of judicial officers, under such rules and regulations as the local government of India has established for the rest of the inhabitants of the country. With regard to the extension of the jurisdiction of the king's courts already established at the presidencies, although in the courts justice is, I think, ably administered, yet it is at an expense so enormous to the parties, and to the community, that even so wealthy a city as Calcutta is unable to support its exorbitant costs, to which two successive grand juries have called the attention of the judges without any effect.

52. Q. *How would the settlement on a large scale of Europeans of capital in the country improve its resources?*

A. As a large sum of money is now annually drawn from India by Europeans retiring from it with the fortunes realized there, a system which would encourage Europeans of capital to become permanent settlers with their families, would necessarily greatly improve the resources of the country.

53. Q. *Is there any portion of land in the provinces with which you are acquainted, free from public assessments?*

A. There is land of this description, and in some districts to considerable extent.

54. Q. *Have any measures been adopted by government to ascertain the validity of the titles by which such lands are held free from assessment, or have any of them been resumed, and under what circumstances?*

A. In Reg. XIX of 1793, Lord Cornwallis, the Governor-General in Council, directed the revenue collectors to enquire into the validity of the titles of such land: and in case of there being any doubt as to their validity, to institute prosecutions so as to have them judicially investigated; and in the event of the parties in possession of the land failing to establish a valid title in the court, the lands might, by a decree of the court, be resumed by the collectors on behalf of government. But the government declared, in the preamble of that regulation, that no holder of such tax-free (*lakheraj*) lands should be deprived of them, or subjected to revenue, until his title should be judicially investigated and "adjudged invalid by a final judicial decree." However, I feel bound to add, that in 1823, by Reg. III of that year, the revenue collector in each district was authorized to dispossess the holders of such tax-free lands by his own authority, without reference to any judicial courts, if the collector should be of opinion, after such enquiry as might satisfy himself that the title of the proprietor was not valid. It is then enacted (Sec. 4, Art. 1) that "such decision of the collector shall have the force and effect of a decree." Also (Art. 2), that "it shall not be necessary for him to transmit his proceedings to the Board of Revenue," but "the party dispossessed might appeal;" and by Art. 3 whether an appeal be filed or not, "that it shall and may be lawful for the collector immediately to carry into effect his decision by attaching and assessing the lands." This regulation produced great alarm and distrust amongst the natives of Bengal, Behar, and Orissa, many of whom petitioned against the principle of one party, who lays claim to the land, dispossessing an actual possessor at his own discretion; and Lord William Bentinck, though he has not rescinded the regulation, has suspended the immediate execution of it for the present.

(Signed) RAMMOHUN ROY.

LONDON, August 19, 1831.

PAPER

ON THE

REVENUE SYSTEM OF INDIA.

VARIOUS opinions are entertained by individuals with regard to the perpetual settlement of public revenue, concluded according to Regulation I of 1793 with proprietors of land in the provinces of Bengal, Behar, and Orissa, and arguments resting on different principles have been adduced for and against this system ; no room is therefore left for throwing any new light on the subject. We may, however, safely advance so far as to admit the settlement to be advantageous to both the contracting parties, though not perhaps in equal proportion.

2. To convince ourselves, in the first instance, of the accuracy of the opinion that the perpetual settlement has proved advantageous to government, a reference to the revenue records of the former and present rulers will, I think, suffice. No instance can be shewn in those records, in which the sum assessed and annually expected from these provinces was ever collected with equal advantage prior to the year 1793. To avoid the demand of an increase of revenue on the part of government, proprietors in general used then wilfully to neglect the cultivation, which very often proved utterly ruinous to themselves, and excessively inconvenient to government, in managing, farming, or selling such estates for the purpose of realizing their revenues.

3. Such persons as have directed their attention to the revenue records of government, must have been struck with the extreme difference existing between the rate of value at which estates usually sold prior to the year 1793, or even several years subsequent to that period, and the common price which the disposal of those estates now obtains to government or individuals at public or private sales ; and it will not, I believe, be alleged that I am far wrong, when I say that this increase may in general be reckoned tenfold, and in some instances twenty. This enormous augmentation of the price of land

is principally to be attributed to the extensive cultivation of waste lands which has taken place in every part of the country, and to the rise of rents payable by the cultivators, and not to any other cause that I can trace.

It is true the common increase of wealth has an irresistible tendency to augment the price, without any improving change in the property; but when we reflect on the extent of overwhelming poverty throughout the country (towns and their vicinity excepted), we cannot admit that increase of wealth in general has been the cause of the actual rise in the value of landed estates. To those who have ever made a tour of the provinces, either on public duty or from motives of curiosity, it is well known that within a circle of a hundred miles in any part of the country there are to be found very few, if any (besides proprietors of lands), that have the least pretension to wealth or independence, or even the common comforts of life.

5. It has been asserted, and perhaps justly, that much of the increased wealth of Bengal in late years is to be ascribed to the opening of the trade in 1814, thereby occasioning a greatly increased demand for the produce of lands. In as far, however, as this cause may have operated to increase of wealth, it is confined to landlords and dealers in commodities.

6. Besides, government appropriates to itself an enormous duty on the transit and exportation of the produce of the soil, which has, since the period of the perpetual settlement, increased to a great amount from the exertion of the proprietors in extending and improving cultivation, under the assurance that no demand of an increase of revenue would be made upon them on account of the progressive productiveness of their estates.

7. In the second place, that the perpetual settlement has been conducive to the interest of the proprietors of land is, in fact, acknowledged by all parties, and is fully evident on reference to the present and former revenue registers. The benefit which the proprietors enjoy is principally owing to two circumstances: First, The extended cultivation of waste lands which formerly yielded no rent: Secondly, Subsequent increase of rents, much beyond those rates paid by cultivators at the time of the perpetual settlement, in defiance of the rights of *Khud-kasht* Ryots--that is, such villagers as cultivate on lease the land that belongs to the village.

OF INDIA.

8. None will, I think, hesitate to rejoice in the augmentation of the incomes of proprietors derived from the extension of cultivation, as every man is entitled by law and reason to enjoy the fruits of his honest labour and good management. But as to the policy of vesting in the proprietors themselves, exempted from any increase of tax, the power of augmenting rents due from their *Khud-kasht* tenants, I must confess it to be a subject that requires examination.

9. It is too true to be denied that there was no regular system of administering justice, even in theory, under the government of the former rulers, and that there were few instances in which such humble individuals as *Khud-kasht* Ryots succeeded in bringing complaints against proprietors to the notice of higher authorities ; nevertheless their claims to the cultivation of particular soils at fixed rates, according to their respective qualities, were always admitted as their means of livelihood, and inducement to continue to reside in their native village, although proprietors very often oppressively extorted from them sums of money, in addition to their rents, under the name of *abracas*, or subscriptions ; while, on the other hand, the Ryots frequently obtained deductions through collusion with the managers acting in behalf of the proprietors.

10. The measure adopted for the protection of *Khud-kasht* tenants in Article 2nd, Sec. LX, Reg. VIII of 1793, was conditional and has been consequently subject to violation. Hence they have benefited very little, if at all, by its provisions.

11. The power of imposing new leases and rents, given to the proprietors by Regs. I and VIII of 1793, and subsequent Regulations, has considerably enriched comparatively a few individuals—the proprietors of land—to the extreme disadvantage, or rather ruin, of millions of their tenants ; and it is productive of no advantage to the government.

12. During the former system of government, proprietors in these and other provinces, contrary to the tenure by which lands are held in England, were required to pay a considerable proportion of their rents to the ruler of the country, whose arbitrary will was alone sufficient to augment or reduce the rates of the revenue demandable from them, and who, by despotic power, might deprive them of their rights as proprietors when they failed to pay the revenue unjustly alleged to be due from them. Under these circumstances, the situation of the proprietors was not in any respect on a more favourable

footing than that of the *Khud-kasht* tenant, and consequently their right was not in any way analogous to that of a landlord in England.

13. In short, there were three parties acknowledged to have had a fixed right in the soil:—1st, The Ryots to cultivate the land, and receive one-half of the produce in return for the seed and labour. 2ndly, The government, in return for its general protection, to receive the other half with the exception of one-tenth or eleventh. 3rdly, The Zamindars, or landholders to receive the tenth or eleventh for their local protection, and for their intervention between the government and the peasantry.

14 With a view to facilitate the collection of revenue and to encourage proprietors to improve their estates, government liberally relieved them in the year 1793 from the distress and difficulties originating in the uncertainty of assessment, by concluding a perpetual settlement with them. But I am at a loss to conceive why this indulgence was not extended to their tenants, by requiring proprietors to follow the example of government, in fixing a definite rent to be received from each cultivator, according to the average sum actually collected from him during a given term of years; or why the feeling of compassion excited by the miserable condition of the cultivators does not now induce the government to fix a *maximum* standard, corresponding with the sum of rent now paid by each cultivator in one year, and positively interdict any further increase.

15. Some, however, doubt whether government can now assume the power of bettering the condition of this immense portion of its subjects, without violating the long-standing practice of the country, and the principles laid down in their existing regulations, at least for the last forty years. But I am satisfied that an unjust precedent and practice, even of longer standing, cannot be considered as the standard of justice by an enlightened government.

16. With respect to the Regulations, however, there would be no real violation of them; as in Reg. I of 1793, which is the basis of the permanent settlement, the government thus expressly declares, that "It being the duty of the ruling power to protect all classes of people, and more particularly those who from their situation are most helpless, the Governor-General in council will, whenever he may deem it proper, enact such regulations as he may think necessary, for the protection and welfare of the dependent *Talookdars*, *Ryots*, and other cultivators of the soil; and no *Zamindar* independent

Talookdar, or the actual proprietor of land, shall be entitled on this account to make any objection to the discharge of the fixed assessment which they have respectively agreed to pay."

17. And again in Regulation VIII of 1793 (Section 60, Article 2), the government recognized the principle of the cultivators of the lands attached to their own village (*Khud-kasht Ryots*) having a permanent right to retain possession thereof at a fixed rent, and enacted that their title-deeds (*Pattahs*) should not be set aside, except in certain specified cases, applicable to that period of general settlement, and not extending to forty years afterwards.

18. I regret to say that in some parts of these provinces the rent is already raised so high, that even an interdict against further increase cannot afford the Ryots (cultivators) any relief or comfort; consequently, the government might endeavour to raise part of its revenue by taxes on luxuries, and such articles of use and consumption as are not necessities of life, and make a proportionate deduction in the rents of the cultivators, and in the revenues of the *Zamindars* to whom their lands belong.

19. Failing this, the same desirable object may be accomplished by reducing the revenue establishment in the following manner:— Under the former government, the natives of the country, particularly Hindoos, were exclusively employed in the revenue department in all situations, and they are still so almost exclusively under the present system. The collectors being covenanted European servants of the Company, are employed as superintendents at a salary of a thousand or fifteen hundred rupees (100 to 150 l.) per mensem. The duties, however, are chiefly performed by the native officers, as they are not of such importance or difficulty as the duties attached to the judicial department, in which one slip might at once destroy the life of the innocent, or alter the just destination of property for a hundred generations.

20. The principal duties attached to the situation of Collector are as follows: 1st. The receipt of the revenue by instalments according to the assessment, and remitting the amount thus collected to the General Treasury; or to one of the commanding officers; or to the Commercial Resident, or Salt Agent, as directed by the Accountant General. 2nd. Advertising and selling the estates of defaulters to realize arrears. 3rd. Taking care of his own treasury (to prevent any mismanagement of it) and the revenue records. 4th. Making

partitions of estates, when joint sharers thereof apply to him for such division. 5th. Preparing a quinquennial register of the estates paying revenue within his collectorship. 6th. Ascertaining what tax-free land has been in the possession of individuals without a valid title. 7th. Furnishing the judicial authorities with official papers required by them, and executing their decrees concerning lands, &c. 8th. Deciding cases which the judicial officer has it in his option to refer to the collector. 9th. Officiating as local post-master under the authority of the post-master-general. 10th. Assessing duties on the vendors of liquors and drugs with the concurrence of the magistrate, and collecting the duties payable thereon (receiving five per cent. on the amount of collection for his trouble). 11th. Giving out stamped papers to native vendors, and he being responsible for the same, ten per cent., I think, on the sum realized is allowed him for his trouble and responsibility. (The two latter articles produce of the collector an additional monthly income of from not less than 200 to 1,000 rupees a month, according to the greater or smaller sale in different districts). 12th. Regulating the conduct of the native sub-collectors, assessors and surveyors, employed on the estates under the immediate management of government. 13th. Transmitting monthly and annual reports and accounts to the accountant-general and the civil auditor, and corresponding with the Board of Revenue on the various affairs of his collectorship as well as obeying their instructions.

21. A native of respectability at a salary of about 300 or 400 rupees per month may be appointed in lieu of the European collector, and he should give sureties for his character and responsibility to such amount as government may deem adequate. The large sum that may thus be saved by dispensing with the collectors would not only enable government to give some relief to the unfortunate Ryots above referred to by reducing their rents, but also raise the character of the natives and render them attached to the existing government and active in the discharge of their public duties, knowing that under such a system the faithful and industrious native servant would receive the merit, and ultimately the full reward of his services; whereas under the present system the credit or discredit is attributed to the European head of the department; while the natives who are the real managers of the business are entirely overlooked and neglected, and consequently they seem most of them to be rendered quite indifferent to anything but their own temporary interest.

22. With respect to the expediency and advantage of appointing native revenue officers to the higher situations in the revenue department, I am strongly supported by the opinions of persons whose sentiments have great weight with the governing party as well as with the party governed. I can safely quote the remarks of many distinguished servants of the Honourable East India Company, such as Sir Thomas Munro, Mr. Robert Rickards, Mr. H. Ellis, and others.

23. The native collectors should be under the immediate and strict control of the Board of Revenue as the European collectors at present are, and should be made strictly responsible for every act performed in their official capacity. No one should be removed from his situation unless on proof of misconduct regularly established to the satisfaction of government on the report of the Board of Revenue.

24. For the present, perhaps, it would be proper to transfer the duty of selling the property of defaulting landholders to the registrars; and the judges, instead of referring causes to the revenue officers, should submit them to the Sudder Ameen (or native commissioners already appointed to decide causes under a certain amount).

25. In order to prevent the exercise of any undue influence or bribery in obtaining the situation of native collectors of revenue, it is requisite that all the present *Serishtadars* or head native officers attached to the different collectorships, should each be confirmed, at once, in the situation of collector, and in case of his death or removal, the next in rank should succeed him. In the same manner those under them should be each promoted regularly in succession according to his rank in the revenue department, unless incapacitated from being unable to produce the requisite security, or from other evident disqualification. And no one should be allowed to hold the situation of collector unless he had been at least ten years in the revenue service.

26. The present collectors may be transferred, if found qualified, to the judicial or some other department, or allowed to retire on suitable pensions. Besides the Board of Revenue, who should exercise a constant superintendence over the revenue branch, there should be six or eight European civil servants of the company, who stand high in the estimation of government, appointed under the denomination of circuit collectors, to examine personally, from time to time, the records kept, and the proceedings held by the native collectors.

27. At all events I must conclude with beseeching any and every authority to devise some mode of alleviating the present miseries of the agricultural peasantry of India and thus discharge their duty to their fellow-creatures and fellow-subjects.

LONDON,

August 19, 1831.

ADDITIONAL QUERIES

RESPECTING

THE CONDITION OF INDIA.

1. QUESTION. *What is your opinion of the physical condition of the Indian peasantry?*

ANSWER. India is so extensive a country that no general statement on this subject will apply correctly to the people of the various parts of it. The Natives of the Southern and Eastern Provinces for example, are by no means equal in physical qualities to those of the Northern and Western Provinces. But as regards physical strength, they are upon the whole inferior to the Northern nations, an inferiority which may be traced, I think, to three principal causes : 1st, The heat of the climate of India, which relaxes and debilitates the constitution : 2ndly, The simplicity of the food which they use, chiefly from religious prejudices : 3rdly, The want of bodily exertion and industry to strengthen the corporeal frame, owing principally to the fertility of the soil, which does not render much exertion necessary for gaining a livelihood. Hence the Natives of Africa, and some parts of Arabia, though subject to the influence of the same, or perhaps a greater intensity of heat, yet from the necessity imposed upon them of toiling hard for sustenance, and from using animal food, are able to cope with any Northern race in physical strength ; therefore, if the people of India were to be induced to abandon their religious prejudices, and thereby become accustomed to the frequent and common use of a moderate proportion of animal food, (a greater proportion of the land being gradually converted to the pasture of cattle), the physical qualities of the people might be very much improved. For I have observed with respect to distant cousins, sprung from the same family, and living in the same district, when one branch of the family had been converted to Mussulmanism, that those of the Muhammadan branch living in a freer manner, were distinguished by greater bodily activity and capacity for exertion, than those of the other branch which had adhered to the Hindoo simple mode of life.

2. Q. *What is the moral condition of the people?*

A. A great variety of opinions on this subject has already been afloat in Europe for some centuries past, particularly in recent times, some favourable to the people of India and some against them. Those Europeans, who, on their arrival in the country, happened to meet with persons whose conduct afforded them satisfaction, felt prepossessed in favour of the whole native population, and respected them accordingly; others again who happened to meet with ill-treatment and misfortunes, occasioned by the misconduct or opposition, social or religious, of the persons with whom they chanced to have dealings or communication, represented the whole Indian race in a corresponding light; while some, even without being in the country at all, or seeing or conversing with any Natives of India, have formed an opinion of them at second hand founded on theory and conjecture. There is, however, a fourth class of persons, few indeed in number, who though they seem unprejudiced, yet have differed widely from each other, in many of their inferences from facts, equally within the sphere of their observation, as generally happens with respect to matters not capable of rigid demonstration. I therefore feel great reluctance in offering an opinion on a subject on which I may unfortunately differ from a considerable number of those gentlemen. However, being called upon for an opinion, I feel bound to state my impression, although I may perhaps be mistaken.

From a careful survey and observation of the people and inhabitants of various parts of the country, and in every condition of life, I am of opinion that the peasants or villagers who *reside at a distance from large towns and head stations and courts of law*, are as innocent, temperate and moral in their conduct as the people of any country whatsoever; and the farther I proceed towards the North and West, the greater the honesty, simplicity and independence of character I meet with. The virtues of this class however rest at present chiefly on their primitive simplicity, and a strong religious feeling which leads them to expect reward or punishment for their good or bad conduct, not only in the next world, but like the ancient Jews, also in this: 2ndly, The inhabitants of the cities, towns or stations who have much intercourse with persons employed about the courts of law, by Zamindars, &c., and with foreigners and others in a different state of civilization, generally imbibe their habits and opinions. Hence their religious opinions are shaken without any

other principles being implanted to supply their place. Consequently a great proportion of these are far inferior in point of character to the former class, and are very often even made tools of in the nefarious work of perjury and forgery : 3rdly, A third class consists of persons who are in the employ of landholders (Zamindars) or dependent for subsistence on the courts of law, as attorney's clerks, and who must rely for a livelihood on their shrewdness ; not having generally sufficient means to enter into commerce or business. These are for the most part still worse than the second class ; more especially when they have no prospect of bettering their condition by the savings of honest industry, and no hope is held out to them of rising to honour or affluence by superior merit. But I must confess that I have met a great number of the second class engaged in a respectable line of trade, who were men of real merit, worth and character. Even among the third class I have known many who had every disposition to act uprightly and some actually honest in their conduct. And if they saw by experience that their merits were appreciated, that they might hope to gain an independence by honest means, and that just and honourable conduct afforded the best prospect of their being ultimately rewarded by situations of trust and respectability, they would gradually begin to feel a high regard for character and rectitude of conduct ; and from cherishing such feelings become more and more worthy of public confidence, while their example would powerfully operate on the second class above-noticed, which is generally dependent on them and under their influence.

3. Q. *What is the rate of wages generally allowed to the peasantry and labourers ?*

A. In Calcutta, artisans, such as blacksmiths and carpenters, if good workmen, get (if my memory be correct) from ten to twelve rupees a month (that is, about 20 to 24 shillings) ; common workmen who do inferior plain work, 5 or 6 rupees (that is, about 10 or 12 shillings sterling money) ; masons from 5 to 7 (10 to 14 shillings) a month ; common labourers about 3½ and some 4 rupees ; gardeners or cultivators of land about 4 rupees a month, and palanquin-bearers the same. In small towns the rates are something below this, in the country places still lower.

1. Q. *On what kind of provisions do they subsist ?*

A. In Bengal they live most commonly on rice with a few vegetables, salt, hot spices and fish. I have however often observed the

poorer classes living on rice and salt only. In the upper provinces they use wheaten flour instead of rice, and the poorer classes frequently use bajra (millet), &c. ; the Mohamedans in all parts who can afford it add fowl and other animal food. A full grown person in Bengal consumes about 1lb. to 1½lb. of rice a day ; in the upper provinces a larger quantity of wheaten flour, even though so much more nourishing. The Vaishyas (persons of the third class) and the Brahmans of the Dakhan never eat flesh under any circumstances.

5. Q. *What sort of houses do they inhabit ?*

A. In higher Bengal and the upper and Western Provinces they occupy mud huts ; in the lower and Eastern parts of Bengal generally hovels composed of straw, mats and sticks ; the higher classes only having houses built of brick and lime.

6. Q. *How are they clothed ?*

A. The Hindus of the Upper Province wear a turban on the head, a piece of cotton cloth (called a *Chadar*) wrapped round the chest, and another piece girt closely about the loins and falling down towards the knee ; besides, they have frequently under the *Chadar* a vest or waistcoat cut and fitted to the person. In the lower provinces they generally go bareheaded ; the lower garment is worn more open but falling down towards the ankle ; and the poorer classes of labourers have merely a small strip of cloth girt round their loins for the sake of decency and are in other respects quite naked. The Mohammedans everywhere use the turban and are better clad. The respectable and wealthy classes of people, both Mussulmans and Hindus, are of course dressed in a more respectable and becoming manner.

7. Q. *Does the population increase rapidly ?*

A. It does increase considerably, from the early marriages of the people and from the males so seldom leaving their families, and almost never going abroad. But there are occasional strong natural checks to this superabundance. The vast number carried off of late years by cholera morbus having greatly reduced the surplus population, the condition of the labourers has since been much improved, in comparison with what it was before the people were thinned by that melancholy scourge.

8. Q. *What is the state of industry among them ?*

A. The Mohammedans are more active and capable of exertion than the Hindus, but the latter are also generally patient of labour.

and diligent in their employments, and those of the Upper Province not inferior to the Mohammedans themselves in industry

9. Q. *What capability of improvement do they possess?*

A. They have the same capability of improvement as any other civilized people.

10. Q. *What degree of intelligence exists among the native inhabitants?*

A. The country having been so long under subjection to the arbitrary military government of the Mahomedan rulers, which showed little respect for Hindu learning, it has very much decayed and indeed almost disappeared, except among the Brahmaus in some parts of the Dakhan (Deccan), and of the Eastern side of India, more distant from the chief seat of Mohammedan government. The Mussulmans, as well as the more respectable classes of Hindus chiefly, cultivated Persian literature, a great number of the former and a few of the latter also extending their studies likewise to Arabic. This practice has partially continued to the present time, and among those who enjoy this species of learning, as well as among those who cultivate Sanscrit literature, many well-informed and enlightened persons may be found, though from their ignorance of European literature, they are not naturally much esteemed by such Europeans as are not well versed in Arabic or Sanscrit.

11. Q. *How are the people in regard to education?*

A. Those about the courts of the native princes are not inferior in point of education and accomplishments to the respectable and well-bred classes in any other country. Indeed they rather carry their politeness and attention to courtesy to an inconvenient extent. Some seminaries of education (as at Benares, &c.) are still supported by the princes and other respectable and opulent native inhabitants, but often in a very irregular manner. With respect to the Hindu College in Calcutta, established under the auspices of government on a highly respectable and firm footing, many learned Christians object to the system therein followed of teaching literature and science without religion being united with them; because they consider this as having a tendency to destroy the religious principles of the students (in which they were first brought up and which consequently were a check on their conduct), without substituting anything religious in their stead.

12. Q. *What influence has superstition over the conduct of the people?*

A. I have already noticed this in reply to query 2nd.

13. Q. *What is the prevailing opinion of the Native inhabitants regarding the existing form of government and its administrators Native and European ?*

A. The peasantry and villagers in the interior are quite ignorant of, and indifferent about either the former or present government, and attribute the protection they may enjoy or oppression they may suffer to the conduct of the public officers immediately presiding over them. But men of aspiring character and members of such ancient families as are very much reduced by the present system, consider it derogatory to accept of the trifling public situations which natives are allowed to hold under the British Government, and are decidedly disaffected to it. Many of those, however, who engage prosperously in commerce, and of those who are secured in the peaceful possession of their estates by the permanent settlement, and such as have sufficient intelligence to foresee the probability of future improvement which presents itself under the British rulers, are not only reconciled to it, but really view it as a blessing to the country.

But I have no hesitation in stating, with reference to the general feeling of the more intelligent part of the Native community, that the only course of policy which can ensure their attachment to any form of Government, would be that of making them eligible to gradual promotion, according to their respective abilities and merits, to situations of trust and respectability in the state.

(Signed) RAMMOHUN ROY.

LONDON :

September 28, 1831

NOTE.

In replying to Queries 2nd, 9th and 10th, I have felt great delicacy in offering to the British public, situated at the distance of so many thousand miles, my opinion of the character of my own countrymen, and of their intelligence and capability of improvement; lest I should be accused of partiality, or supposed to be prejudiced in their favour. I have, there-
endeavoured to convey my sentiments in very moderate language.

In replying to Query 11, I wish to be distinctly understood as referring to those Natives of India who have been brought up under the mixed system of Hindoo and Mahomedan education, which has hitherto existed in the country among the respectable classes. The present generation of youth, particularly at the Presidency, bred up in communication and intercourse more or less with Europeans, are progressively becoming imbued with their habits, manners, and ideas, and will, in the course of time, most probably approximate very nearly to them. My remarks are, therefore, not applicable to these, and may in a few years appear strange to those who do not consider and make allowance for these changes.

APPENDIX

No. I.

SINCE the foregoing evidence has been circulated, a gentleman of high literary repute, connected with India, has expressed doubts regarding the policy or expediency of the suggestions I made in reply to Queries 71, 72, on the Judicial System, in the following words :

"No civil servant should be sent to India under twenty-four or at least twenty-two years of age, and no candidate among them should be admitted into the judicial line of the service, unless he can produce a certificate from a professor of English law to prove that he possesses a competent knowledge of it."

In addition to the reasons there advanced in support of this position, and also in reply to Query 77, I beg here to quote (with deference to that gentleman's extensive oriental acquirements), the authority of Sir William Blackstone, given in his introduction to the celebrated "Commentaries on the Laws of England", an authority which stands very high in the estimation of the British public.

'Should a judge in the most subordinate jurisdiction be deficient in the knowledge of the law, it will reflect *infinite contempt* on himself and *disgrace* upon those who employ him. And yet the consequence of his ignorance is *comparatively* very trifling and small : his judgment may be examined and his errors rectified by other courts. But how much more serious and affecting is the case of a superior judge, if without any skill in the laws he will boldly venture to decide a question upon which the welfare and subsistence of whole families may depend, where the chance of his judging right or wrong is barely equal, and where if he chances to judge wrong, he does an injury of the most alarming nature, an injury without possibility of redress." Sec. 1, No. 12.

It should not be overlooked that the Company's District Judges and young Registrars who have the decision of minor causes, (are afterwards made judges of the provincial courts of appeal, and also of the Sudder Dewany and Nizamut Adawlut (the highest civil and criminal tribunals). whose decision is final in all criminal causes, as

well as in civil causes under 50,000 rupees ; and that even in regard to causes above that sum, very few have the means of appealing to the king and council in England. The peculiar difficulties and discouragements attending such appeals have been already pointed out in my evidence. (Judicial System, Q. 51.)

No. II.

In my paper on the Revenue System I expressed an opinion that the permanent settlement has been beneficial to both the contracting parties, i.e., the government and the landholders. This position, which, as regards the former, was long much controverted, does not now rest upon theory ; but can be proved by the results of about forty years' practice. To illustrate this, I subjoin the annexed statements, Nos. I. and II., shewing the failure of the whole amount of the public revenue at Madras under the Ryotwary system as contrasted with the general increase of the revenue of Bengal under the Zamindari permanent settlement ; the latter diffusing prosperity into the other branches of revenue, whereas the former (or Ryotwary system), without effecting any material increase, in that particular branch, has, by its impoverishing influence, tended to dry up the other sources of Revenue : a fact which must stand valid and incontrovertible as a proof of the superiority of the latter, until a contrary fact of greater or at least equal weight can be adduced.

STATEMENT 1ST.—*Bengal, Behar and Orissa.*

By a comparative view of the Revenues of Bengal, Behar and Orissa, from the period of the Perpetual Settlement, it appears that, in the thirty-five years, from 1792-93 to 1827-28, there was a total increase on the whole amount of the Revenue of above 100 per cent. (101·71). and that this increase has been steady and progressive up to the present time ; in the first seventeen years (from 1792-3 to 1809-10) it was about 42½ per cent. ; in the next eighteen years (from 1809-10 to 1827-28) 43½ per cent., and in the last ten years of that period (from 1817-18 to 1827-28) it was nearly 30 per cent.

These results are extracted from The Second Report of the Select Committee on the Affairs of the East India Company in 1810, p. 80 ; The Second Report of 1830, p. 98. In 1815-16, the revenue of Cuttack was incorporated with that of Bengal, but in 1822 the revenue of this Province did not exceed 185,000 l.

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on foot an immense standing army at an enormous cost. This consideration is of great importance in respect to the natives of the upper and western provinces, who are distinguished by their superior bravery, and form the greater part of the British Indian army. If this race of men, who are by no means deficient in feelings of personal honour and regard for family respectability, were assured that their rights in the soil were indefeasible so long as the British power should endure, they would from gratitude and self-interest at all times be ready to devote their lives and property in its defence. The saving that might be effected by this liberal and generous policy, through the substituting of a militia force for a great part of the present standing army, would be much greater than any gain that could be realized by any system of increasing land revenue that human ingenuity could devise. How applicable to this case is the following line of the Persian sage (Sadi). "Be on friendly terms with thy subjects, and rest easy about the warfare of thine enemies; for to an upright prince his people is an army."

Bá rayat sulh kun wa'z jang i khashm aiman nishín

Z'ánki sháhinsháh i ádil rá rayat lashkar ast.

On the other hand the same confidence could not be produced by any periodical settlement (be it quinquennial, decennial or even centennial) formed on the narrow policy of securing a temporary advantage or remote problematical gain to the government; since the love of offspring and the desire of continuing name and lineage in connection with the place of nativity and of residence, and with hereditary property, are the same in a peasant as in a prince.

No. IV.

An idea has gone abroad that the permanent or Zamindary system, though undeniably beneficial to Government, has proved too advantageous to the landholders; and the vast wealth which they are supposed to have derived from it has excited an anxiety in the minds of some to devise a plea for overturning it. The fact, however, is, that even the greatest landholder in the country, such as the Rajah of Burdwan, who pays a landtax of between 30 and 40 lakhs of rupees to Government, does not receive more than six or eight lakhs, about 20 per cent. on the amount collected, for his own share as proprietor. For this sum they incur an immense responsibility to the Government; they are punishable for thefts and robberies committed within their

estates, when suspected even of negligence in preventing or detecting such offences, and subject to loss by inundations and failure of crops. Some may have about an equal sum with that payable to government, and a very few double; these almost exclusively in the eastern parts of Bengal. But the generality are by no means so favourably situated as is generally supposed; a fact clearly proved by the estates which come into the immediate management of Government in the Court of Wards, and which may be easily inferred from the frequent sales of estates for arrears of revenue.

Supposing these landholders of Bengal to stand in the place of the farmers in England, who are considered to pay about one-third of the produce of their farms as rent; is there anything so unreasonable, if the Zamindars receive 15 or 20 per cent.; a very few 30 per cent. of the produce of their estates? If the persons above alluded to, who suppose the Zamindars too well off, will only wait a little, as the law of primogeniture is not established or observed, the effect of hereditary succession will soon so subdivide the estates, and reduce the incomes of the landholders, that very few, if any, rich Zamindars can be found in the country.

No. V.

In illustration of the statement made in my reply to Query 52, on the Revenue System, that as a sum of money is drawn from India by Europeans retiring from it with fortunes realized there, a different system, calculated to encourage Europeans of capital to become permanent settlers with their families, would necessarily greatly improve the resources of the country; I here subjoin some tables showing the amount paid to the principal European Civil Officers of the Government in the General, Judicial and Revenue Departments in India in 1826-7. The Military Establishment, of course, is not included. Besides, such Europeans as are barristers, solicitors and law officers paid by fees, merchants, agents, and planters also, not being permitted to settle in the country, retire from it with their fortunes; and these, likewise, are not included in the statement. Moreover, many miscellaneous and minor officers are not enumerated in the subjoined list; I also annex a note shewing the amount of the Revenues of India expended in England.

BENGAL CIVIL OFFICES.

I.—GENERAL BRANCH.

		PER ANNUM	
		Indian Money.	Sterling
		Rs.	£
Governor-General's Salary	...	2,41,181	24,418
3 Members of Council, in all	...	2,93,017	29,301
6 Secretaries to Government	...	2,74,000	27,400
3 Judges of the King's Supreme Court	...	1,95,344	19,534
Lord Bishop of Calcutta	...	50,303	5,030
Archdeacon and 31 Chaplains	...	3,00,322	30,022
Advocate-General, Company's Attorney, and Standing Council	...	80,581	8,058
7 Residents at Native Courts, (Delhi, Lucknow, Gwalior, Nagpoor, Hyderabad, Indore, Nepal)...	...	6,81,509	68,150
9 Local (Political) Agents, with 5 Assistants and Surgeons	...	2,37,573	23,757
5 Ditto ditto (at Joypore, Harowtee, for Sikh and Hill Affairs—Serowhee, Mhairwarra)	...	95,241	9,524
18 Assistants	...	1,29,000	12,900
11 Surgeons and Assistants, Ditto	...	86,640	8,664
Postmaster-General	...	60,623	6,063
Accountant-General	...	44,400	4,440
Sub-Treasurer	...	36,000	3,600
4 Mint Masters	...	60,993	6,099
4 Assay Masters	...	60,600	6,060

II.—JUDICIAL BRANCH.

Supreme Civil and Criminal Courts (Sudder Dewanee and Nizamut Adawlut.)

		Rs.	£
5 Judges	...	2,80,000	28,000
1 Registrar and Deputy	...	39,600	3,960
4 Assistants	...	27,683	2,768
2 Translators	...	9,600	960

Four Provincial Courts of Appeal and Circuit, viz., Calcutta, Dacca, Moorshedabad and Patna

		Rs.	£
17 Judges	...	6,55,000	65,500
6 Surgeons, at Rs. 4,800	...	28,800	2,880

Two Additional Provincial Courts of Appeal and Circuit of Benares and Bareilly, 9 Judges; also Benares City Adawlut, Ghazepore, Juanpore and Mirzapoor, 4 Judges and Magistrates

				PER ANNUM.	
				Indian Money.	Sterling.
				Rs.	£
13 Judges	...	...	...	4,71,196	47,119
5 Registrars, and Registrars and Joint Magistrates	...	...	...	51,082	5,108
8 Surgeons and Assistant Surgeons	...	...	...	38,400	3,840

Three City Adawluts—Dacca, Moorshedabad, Patna.

3 Judges with Magisterial power	...	S.	84,000	8,400
5 Registrars	...	...	37,200	720

Forty Zillah Adawluts.

49 Judges, Magistrates and Assistant Magistrates,	12,13,762	1,21,376
57 Registrars (or Registrars and Joint Magistrates)	4,39,893	43,989
49 Surgeons and Assistant Surgeons	2,26,393	22,693
Superintendents and Assistant do.	1,38,120	13,812
5 Commissioners and Assistant do.	1,18,510	11,851

III.—REVENUE BRANCH.

Lower Provinces.

Board of Revenue, 3 Members	...	...	1,40,000	14,000
Secretary	...	...	26,784	2,678
Sub-Secretary and 2 Assistants	...	...	20,400	2,040
3 Commercial (or Opium) Agents in Behar				
Benares, Malwa	...	...	1,56,091	15,609
Board of Customs, Salt and Opium, 2 Members	...	...	1,05,000	10,500
Secretary	...	...	29,449	2,944
8 Salt Agents	...	...	2,89,354	28,935
20 Collectors of Customs and Duties	...	...	4,30,695	43,069
5 Superintendents of Stamps and of Salt	...	...	1,22,099	12,209
28 Collectors in the Lower Provinces	...	...	6,06,288	60,628
Commissioner in the Sundarbunds	...	...	22,800	2,280
10 Revenue Officers for Calcutta, Hooghley, Jungal Mehals, N. E. of Rungpore, Kumaoon, Cuttack, Balasore, Kherdah	...	...	1,99,424	19,942
Secretary of Presidency Committee of Records and Registrar	...	...	10,800	1,080

		PER ANNUM.	
		Indian Money.	Sterling.
		Rs.	£
<i>Western Provinces.</i>			
Board of Commissioners, 3 Members ...	...	1,44,487	14,448
Secretary, Sub-ditto, and Assistant ...	...	42,744	4,274
12 Collectors, Dy.-Collectors, and 1 Sub-Collector		4,14,792	41,479

Central Provinces.

Board of Revenue, 3 Members ...	...	1,45,000	14,500
Secretary and 5 Assistants ...	...	58,179	5,817
16 Collectors and Sub-Collectors ...	...	3,53,129	35,312
Agent to Govr.-General in Saugor & Nerbuddah		50,000	5,000
9 Assistants in charge of Districts ...	...	1,23,765	12,376

The allowances of the Civil Officers in the Presidencies of Madras and Bombay, are similar to those of Bengal; the chief difference exists between the salaries of the Governors and Members of Council in these Presidencies, and those of the Governor-General in Bengal and the Members of his Council. I shall, therefore, only subjoin an Abstract of the Total Amount of the Civil Service of the Three Presidencies.

Abstract of the Total Number of Covenanted Assistants, and Military and Medical Officers employed in the Civil Department of Bengal, Madras, and Bombay, distinguishing the different Branches and Total Expense of the same in the year 1827. (Extracted from Official Returns, ordered to be printed, 25th Feb. 1830).

1827	BENGAL.		MADRAS.		BOMBAY.		TOTAL.	
	Nos.	Allowances.	Nos.	Allowances.	Nos.	Allowances.	Nos.	Allowances.
BRANCHES.		Rs.		Rs.		Rs.		Rs.
General ...	302	42,47,914	124	14,25,735	18	13,34,391	507	70,08,040
Judicial ...	236	40,48,268	101	16,53,975	66	9,68,733	403	66,70,976
Revenue ...	177	37,11,206	85	13,95,052	65	7,82,370	327	58,88,631
Marine ...	16	1,42,740	22	78,078	20	1,60,596	58	3,81,414
Commercial ...								

N. B.—By the evidence of Messrs. Lloyd and Melville (the former the Accountant-General, and the latter the Auditor-General of the East India Company), recorded in the Minutes of Evidence taken before the Select Committee of the House of Lords, 23rd February 1830, it appears that the proportion of the Indian revenues *expended in England* on the territorial account amounts, on an average, to 3,000,000*l.* sterling annually. It includes the expenses at the Board of Control and India House, pay, absentee allowances, and pensions to Civil and Military Officers in Europe for services in India, with interest of money realized there, &c., &c., besides 453,588*l.* for territorial stores consigned to India.

In a letter of the Court of Directors to the Government of Bengal, dated the 20th of June, 1810, and quoted in the work "On Colonial Policy as applicable to the Government of India," by a very able servant of the Company, holding a responsible situation in Bengal, the Directors state that "it is no extravagant assertion to advance, that the annual remittances to London on account of individuals, have been at the rate of nearly 2,000,000*l.* per annum *for a series of years past.*" (p. 70.) From these and other authentic documents the author calculates the amount of capital, or "the aggregate of tribute, public and private, so withdrawn from India from 1765 to 1820. at 110,000,000*l.*" (p. 65.)

**REMARKS
ON SETTLEMENT IN INDIA BY
EUROPEANS.**

REMARKS

ON SETTLEMENT IN INDIA BY EUROPEANS.*

MUCH has been said and written by persons in the employ of the Hon. East India Company and others on the subject of the settlement of Europeans in India, and many various opinions have been expressed as to the advantages and disadvantages which might attend such a political measure. I shall here briefly and candidly state the principal effects which, in my humble opinion, may be expected to result from this measure.

2. I notice, first, some of the advantages that might be derived from such a change.

ADVANTAGES.

First.—European settlers in India will introduce the knowledge they possess of superior modes of cultivating the soil and improving its products (in the article of sugar, for example), as has already happened with respect to indigo, and improvements in the mechanical arts, and in the agricultural and commercial systems generally, by which the natives would of course benefit.

Secondly.—By a free and extensive communication with the various classes of the native inhabitants the European settlers would gradually deliver their minds from the superstitions and prejudices, which have subjected the great body of the Indian people to social and domestic inconvenience, and disqualified them from useful exertions.

Thirdly.—The European settlers being more on a par with the rulers of the country, and aware of the rights belonging to the subjects of a liberal Government, and the proper mode of administering justice, would obtain from the local Governments, or from the Legislature in England, the introduction of many necessary improvements in the laws and judicial system; the benefit of which would of course extend to the inhabitants generally, whose condition would thus be raised.

Fourthly.—The presence, countenance and support of the European settlers would not only afford to the natives protection against the impositions and oppression of their landlords and other superiors, but also against any abuse of power on the part of those in authority.

* This originally appeared in the General Appendix to the Report of the Select Committee of the House of Commons on the affairs of the East India Company, 1832.—E.

Fifthly.—The European settlers, from motives of benevolence, public spirit and fellow-feeling towards their native neighbours, would establish schools and other seminaries of education for the cultivation of the English language throughout the country, and for the diffusion of a knowledge of European arts and sciences ; whereas at present the bulk of the natives (those residing at the Presidencies and some large towns excepted) have no more opportunities of acquiring this means of national improvement than if the country had never had any intercourse or connection whatever with Europe.

Sixthly.—As the intercourse between the settlers and their friends and connections in Europe would greatly multiply the channels of communication with this country, the public and the Government here would become much more correctly informed, and consequently much better qualified to legislate on Indian matters than at present, when, for any authentic information, the country is at the mercy of the representations of comparatively a few individuals, and those chiefly the parties who have the management of public affairs in their hands, and who can hardly fail therefore to regard the result of their own labours with a favourable eye.

Seventhly.—In the event of an invasion from any quarter, east or west, Government would be better able to resist it, if, in addition to the native population, it were supported by a large body of European inhabitants, closely connected by national sympathies with the ruling power, and dependent on its stability for the continued enjoyment of their civil and political rights.

Eighthly.—The same cause would operate to continue the connection between Great Britain and India on a solid and permanent footing; provided only the latter country be governed in a liberal manner, by means of Parliamentary superintendence, and such other legislative checks in this country as may be devised and established. India may thus, for an unlimited period, enjoy union with England, and the advantage of her enlightened Government : and in return contribute to support the greatness of this country.

Ninthly.—If, however, events should occur to effect a separation between the two countries, then still the existence of a large body of respectable settlers (consisting of Europeans and their descendants, professing Christianity, and speaking the English language in common with the bulk of the people, as well as possessed of superior knowledge, scientific, mechanical, and political) would bring that vast Empire

in the east to a level with other large Christian countries in Europe, and by means of its immense riches and extensive population, and by the help which may be reasonably expected from Europe, they (the settlers and their descendants) may succeed sooner or later in enlightening and civilizing the surrounding nations of Asia.

3. I now proceed to state some of the principal disadvantages which may be apprehended, with the remedies which I think calculated to prevent them, or at any rate their frequent occurrence.

DISADVANTAGE

First.—The European settlers being a distinct race, belonging to the class of the rulers of the country, may be apt to assume an ascendancy over the aboriginal inhabitants, and aim at enjoying exclusive rights and privileges, to the depression of the larger, but less favoured class; and the former being also of another religion, may be disposed to wound the feelings of the natives, and subject them to humiliations on account of their being of a different creed, colour and habits.

As a remedy or preventive of such a result, I would suggest, 1st, That as the higher and better educated classes of Europeans are known from experience to be less disposed to annoy and insult the natives than persons of lower class, European settlers, for the first twenty years at least, should be from among educated persons of character and capital, since such persons are very seldom, if ever, found guilty of intruding upon the religious or national prejudices of persons of uncultivated minds; 2nd. The enactment of equal laws, placing all classes on the same footing as to civil rights, and the establishment of trial by jury (the jury being composed impartially of both classes), would be felt as a strong check on any turbulent or overbearing characters amongst Europeans.

The second probable disadvantage is as follows: the Europeans possess an undue advantage over the natives, from having readier access to persons in authority, these being their own countrymen, as proved by long experience in numerous instances; therefore, a large increase of such a privileged population must subject the natives to many sacrifices from this very circumstance.

I would therefore propose as a remedy, that in addition to the native vakeels, European pleaders should be appointed in the country courts in the same manner as they are in the King's courts at the Presidencies, where the evil referred to is consequently not felt, because

the counsel and attornies for both parties, whether for a native or a European, have the same access to the judge, and are in all respects on an equal footing in pleading or defending the cause of their clients.

The third disadvantage in contemplation is, that at present the natives of the interior of India have little or no opportunity of seeing any Europeans except persons of rank holding public offices in the country, and officers and troops stationed in or passing through it under the restraint of military discipline, and consequently those natives entertain a notion of European superiority, and feel less reluctance in submission; but should Europeans of all ranks and classes be allowed to settle in the country, the natives who come in contact with them will materially alter the estimate now formed of the European character, and frequent collisions of interests and conflicting prejudices may gradually lead to a struggle between the foreign and native race till either one or the other obtain a complete ascendancy, and render the situation of their opponents so uncomfortable that no government could mediate between them with effect, or ensure the public peace and tranquillity of the country. Though this may not happen in the interior of Bengal, yet it must be kept in mind, that no inference drawn from the conduct of the Bengalese (whose submissive disposition and want of energy are notorious) can be applied with justice to the natives of the Upper Provinces, whose temper of mind is directly the reverse. Among this spirited race the jarrings above alluded to must be expected, if they be subjected to insult and intrusion—a state of things which would ultimately weaken, if not entirely undermine, the British power in India, or at least occasion much bloodshed from time to time to keep the natives in subordination.

The remedy already pointed out (para. 3rd, art. 1st, remedy 1st), will, however, also apply to this case, that is, the restriction of the European settlers to the respectable intelligent class already described, who in general may be expected not only to raise the European character still higher, but also to emancipate their native neighbours from the long standing bondage of ignorance and superstition, and thereby secure their affection, and attach them to the government under which they may enjoy the liberty and privileges so dear to persons of enlightened minds.

Some apprehend, as the fourth probable danger, that if the population of India were raised to wealth, intelligence, and public spirit, by the accession and by the example of numerous respectable

European settlers. the mixed community so formed would revolt as) the United States of America formerly did) against the power of Great Britain, and would ultimately establish independence. In reference to this, however, it must be observed that the Americans were driven to rebellion by misgovernment, otherwise they would not have revolted and separated themselves from England. Canada is a standing proof that an anxiety to effect a separation from the mother country is not the natural wish of a people, even tolerably well-ruled. The mixed community of India, in like manner, so long as they are treated liberally, and governed in an enlightened manner, will feel no disposition to cut off its connection with England, which may be preserved with so much mutual benefit to both countries. Yet, as before observed, if events should occur to effect a separation, (which may arise from many accidental causes, about which it is vain to speculate or make predictions), still a friendly and highly advantageous commercial intercourse may be kept up between two free and Christian countries, united as they will then be by resemblance of language, religion, and manners.

The fifth obstacle in the way of settlement in India by Europeans is, that the climate in many parts of India may be found destructive, or at least very pernicious to European constitutions, which might oblige European families who may be in possession of the means to retire to Europe to dispose of their property to disadvantage, or leave it to ruin, and that they would impoverish themselves instead of enriching India. As a remedy I would suggest that many cool and healthy spots could be selected and fixed upon as the head-quarters of the settlers (where they and their respective families might reside and superintend the affairs of their estates in the favourable season, and occasionally visit them during the hot months, if their presence be absolutely required on their estates), such as the Suppatoo, the Nielgherry Hills, and other similar places, which are by no means pernicious to European constitutions. At all events, it will be borne in mind that the emigration of the settlers to India is not compulsory, but entirely optional with themselves.

To these might be added some minor disadvantages though not so important. These (as well as the above circumstances) deserve fair consideration and impartial reflection. At all events, no one will, I trust, oppose me when I say, that the settlement in India by Europeans should at least be undertaken experimentally, so that its effects may be

ascertained by actual observation on a moderate scale. If the result be such as to satisfy all parties, whether friendly or opposed to it, the measure may then be carried on to a greater extent, till at last it may seem safe and expedient to throw the country open to persons of all classes.

On mature consideration, therefore, I think I may safely recommend that educated persons of character and capital should now be permitted and encouraged to settle in India, without any restriction of locality or any liability to banishment, at the discretion of the government; and the result of this experiment may serve as a guide in any future legislation on this subject.

(Sd.) RAMMOHUN ROY.

LONDON, *July 14th, 1822.*

TRANSLATION
OF
A CONFERENCE
BETWEEN
AN ADVOCATE FOR,
AND
AN OPPONENT OF. THE PRACTICE
OF
BURNING WIDOWS ALIVE;
FROM
THE ORIGINAL BUNGLA.

CALCUTTA:

1818

CONFERENCE
BETWEEN
AN ADVOCATE FOR,
AND
AN OPPONENT OF, THE PRACTICE
OF
BURNING WIDOWS ALIVE.

Advocate. I AM surprised that you endeavour to oppose the practice of Concremation and Postcremation of widows,* as long observed in this country.

Opponent. Those who have no reliance on the Sastra, and those who take delight in the self-destruction of women, may well wonder that we should oppose that suicide which is forbidden by all the Sastras, and by every race of men.

Advocate. You have made an improper assertion in alleging that Concremation and Postcremation are forbidden by the Sastras. Hear what Angira and other saints have said on this subject :

“That Woman who, on the death of her husband, ascends the burning pile with him, is exalted to heaven, as equal to Arundhati.

“She who follows her husband to another world, shall dwell in a region of joy for so many years as there are hairs in the human body, or thirty-five millions.

“As a serpent-catcher forcibly draws a snake from his hole, thus raising her husband by her power, she enjoys delight along with him.

“The woman who follows her husband expiates the sins of three races; her father's line, her mother's line, and the family of him to whom she was given a virgin.

* When a widow is absent from her husband at the time of his death, she may in certain cases burn herself along with some relic representing the deceased. This practice is called Anumaran or Postcremation.

"There possessing her husband as her chiefest good, herself the best of women, enjoying the highest delights, she partakes of bliss with her husband as long as fourteen Indras reign.

"Even though the man had slain a Brahman, or returned evil for good, or killed an intimate friend, the woman expiates those crimes.

"There is no other way known for a virtuous woman except ascending the pile of her husband. It should be understood that there is no other duty whatever after the death of her husband."

Hear also what Vyasa has written in the parable of the pigeon :

"A pigeon, devoted to her husband, after his death entered the flames, and ascending to heaven, she there found her husband."

And hear Harita's words :

"As long as a woman shall not burn herself after her husband's death she shall be subject to transmigration in a female form."

Hear too what Vishnu, the saint, says :

"After the death of her husband a wife must live as an ascetic, or ascend his pile."

Now hear the words of the Brahma Purana on the subject of Postcremation :

"If her lord die in another country, let the faithful wife place his sandals on her breast, and pure enter the fire."

The faithful widow is declared no suicide by this text of the Rig Veda : "When three days of impurity are gone she obtained obsequies."

Gotama, says :

"To a Brahmani after the death of her husband, Postcremation is not permitted. But to women of the other classes it is esteemed a chief duty."

"Living let her benefit her husband ; dying she commits suicide."

"The woman of the Brahman tribe that follows her dead husband, cannot, on account of her self-destruction, convey either herself or her husband to heaven."

Concremation and Postcremation being thus established by the words of many sacred lawgivers, how can you say they are forbidden by the Sastras, and desire to prevent their practice ?

Opponent. All those passages you have quoted are indeed sacred law ; and it is clear from those authorities, that if women perform Concremation or Postcremation, they will enjoy heaven for a considerable time. But attend to what Manu and others say respecting

the duty of widows : " Let her emaciate her body, by living voluntarily on pure flowers, roots, and fruits, but let her not, when her lord is deceased, even pronounce the name of another man. Let her continue till death forgiving all injuries, performing harass duties, avoiding every sensual pleasure, and cheerfully practising the incomparable rules of virtue which have been followed by such women as were devoted to one only husband."

Here Manu directs, that after the death of her husband, the widow should pass her whole life as an ascetic. Therefore, the laws given by Angira and others whom you have quoted, being contrary to the law of Manu, cannot be accepted ; because the Veda declares, " Whatever Manu has said is wholesome ;" and Vrihaspati, " Whatever law is contrary to the law of Manu is not commendable." The Veda especially declares, " By living in the practice of regular and occasional duties the mind may be purified. Thereafter by hearing, reflecting, and constantly meditating on the Supreme Being, absorption in Brahma may be attained. Therefore from a desire during life of future fruition, life ought not to be destroyed." Manu, Yajnavalkya, and others, have then, in their respective codes of laws prescribed to widows, the duties of ascetics only. By this passage of the Veda, therefore, and the authority of Manu and others, the words you have quoted from Angira and the rest are set aside ; for by the express declaration of the former, widows after the death of their husbands, may, by living as ascetics, obtain absorption.

Advocate. What you have said respecting the laws of Angira and others, that recommended the practice of Concremation and Postcremation we do not admit : because, though a practice has not been recommended by Manu, yet, if directed by other lawgivers, it should not on that account be considered as contrary to the law of Manu. For instance, Manu directs the performance of Sandhya, but says nothing of calling aloud on the name of Hari ; yet Vyasa prescribes calling on the name of Hari. The words of Vyasa do not contradict those of Manu. The same should be understood in the present instance. Manu has commended widows to live as ascetics ; Vishnu and other saints direct that they should either live as ascetics or follow their husbands. Therefore the law of Manu may be considered to be applicable as an alternative.

Opponent. The analogy you have drawn betwixt the practice of Sandhya and invoking Hari, and that of Concremation and Postcre-

mation does not hold. For, in the course of the day the performance of Sandhya, at the prescribed time, does not prevent one from invoking Hari at another period; and, on the other hand, the invocation of Hari need not interfere with the performance of Sandhya. In this case, the direction of one practice is not inconsistent with that of the other. But in the case of living as an ascetic or undergoing Concremation, the performance of the one is incompatible with the observance of the other. *Scil.* Spending one's whole life as an ascetic after the death of a husband, is incompatible with immediate Concremation as directed by Angira and others; and, *vice versa*, Concremation, as directed by Angira and others, is inconsistent with living as an ascetic, in order to attain absorption. Therefore those two authorities are obviously contradictory of each other. More especially as Angira, by declaring that "there is no other way known for a virtuous woman except ascending the pile of her husband," has made Concremation an indispensable duty. And Harita also, in his code, by denouncing evil consequences, in his declaration, that "as long as a woman shall not burn herself after the death of her husband, she shall be subject to transmigration in a female form," has made this duty absolute. Therefore all those passages are in every respect contradictory to the law of Manu and others.

Advocate. When Angira says that there is no other way for a widow except Concremation, and when Harita says that the omission of it is a fault, we reconcile their words with those of Manu by considering them as used merely for the purpose of exalting the merit of Concremation, but not as prescribing this as an indispensable duty. All these expressions, moreover, convey a promise of reward for Concremation, and thence it appears that Concremation is only optional.

Opponent. If, in order to reconcile them with the text of Manu, you set down the words of Angira and Harita, that make the duty incumbent, as meant only to convey an exaggerated praise of Concremation, why do you not also reconcile the rest of the words of Angira, Harita, and others, with those in which Manu prescribes to the widow the practice of living as an ascetic as her absolute duty? And why do you not keep aloof from witnessing the destruction of females, instead of tempting them with the inducement of future fruition? Moreover, in the text already quoted, self-destruction with the view of reward is expressly prohibited.

Advocate. What you have quoted from Manu and *rajnavalkya* and the text of the Veda is admitted. But how can you set aside the following text of the Rig Veda on the subject of Concremation? "O fire! let these women, with bodies anointed with clarified butter, eyes coloured with collyrium, and void of tears, enter thee, the parent of water, that they may not be separated from their husbands, but may be, in unison with excellent husbands, themselves sinless and jewels amongst women."

Opponent. This text of the Veda, and the former passages from *Harita* and the rest whom you have quoted, all praise the practice of Concremation as leading to fruition, and are addressed to those who are occupied by sensual desires; and you cannot but admit that to follow these practices is only optional. In repeating the Sankalpa of Concremation, the desire of future fruition is declared as the object. The text therefore of the Veda which we have quoted, offering no gratifications, supersedes, in every respect, that which you have adduced, as well as all the words of *Angira* and the rest. In proof we quote the text of the *Kathopanishad*: "Faith in God which leads to absorption is one thing; and rites which have future fruition for their object, another. Each of these, producing different consequences, hold out to man inducements to follow it. The man, who of these two chooses faith, is blessed: and he, who for the sake of reward practices rites, is dashed away from the enjoyment of eternal beatitude." Also the *Mundakopanishad*: "Rites, of which there are eighteen members, are all perishable: he who considers them as the source of blessing shall undergo repeated transmigrations; and all those fools who, immersed in the foolish practice of rites, consider themselves to be wise and learned, are repeatedly subjected to birth, disease, death, and other pains. When one blind man is guided by another, both subject themselves on their way to all kinds of distress."

It is asserted in the *Bhagavad Gita*, the essence of all the *Smritis*, *Puranas*, and *Itihasas*, that, "all those ignorant persons who attach themselves to the words of the Vedas that convey promises of fruition, consider those falsely alluring passages as leading to real happiness, and say, that besides them there is no other reality. Agitated in their minds by these desires, they believe the abodes of the celestial gods to be the chief object; and they devote themselves to those texts which treat of ceremonies and their fruits, and entice by promises

of enjoyment. Such people can have no real confidence in the Supreme Being." Thus also do the Mundakopanishad and the Gita state that, "the science by which a knowledge of God is attained is superior to all other knowledge." Therefore it is clear, from those passages of the Veda and of the Gita, that the words of the Veda which promise fruition, are set aside by the texts of contrary import. Moreover, the ancient saints and holy teachers, and their commentators, and yourselves, as well as we and all others, agree that Manu is better acquainted than any other lawgiver with the spirit of the Veda. And he, understanding the meaning of those different texts, admitting the inferiority of that which promised fruition, and following that which conveyed no promise of gratifications, has directed widows to spend their lives as ascetics. He has also defined in his 12th chapter, what acts are observed merely for the sake of gratifications, and what are not. "Whatever act is performed for the sake of gratifications in this world or the next is called Prabartak, and those which are performed according to the knowledge respecting God, are called Nibartak. All those who perform acts to procure gratifications, may enjoy heaven like the gods; and he who performs acts free from desires, procures release from the five elements of this body, that is, obtains absorption."

Advocate. What you have said is indeed consistent with the Vedas, with Manu, and with the Bhagavad Gita. But from this I fear, that the passages of the Vedas and other Sastras, that prescribe Concremation and Postcremation as the means of attaining heavenly enjoyments, must be considered as only meant to deceive.

Opponent. There is no deception. The object of those passages is declared. As men have various dispositions, those whose minds are enveloped in desire, passion and cupidity, have no inclination for the disinterested worship of the Supreme Being. If they had no Sastras of rewards, they would at once throw aside all Sastras, and would follow their several inclinations, like elephants unguided by the hook. In order to restrain such persons from being led only by their inclinations, the Sastra prescribes various ceremonies, as Syenavaga for one desirous of the destruction of the enemy, Putreshti for one desiring a son, and Jyotishtoma for one desiring gratifications in heaven, &c.; but again reprobates such as are actuated by those desires, and at the same moment expresses contempt for such gratifications. Had the Sastra not repeatedly reprobrated both those

actuated by desire and the fruits desired by them, all those texts might be considered as deceitful. In proof of what I have advanced I cite the following text of the Upanishad, "Knowledge and rites together offer themselves to every man. The wise man considers which of these two is the better and which the worse. By reflecting, he becomes convinced of the superiority of the former, despises rites, and takes refuge in knowledge. And the unlearned, for the sake of bodily gratifications, has recourse to the performance of rites." The Bhagavad Gita says: "The Vedas that treat of rites are for the sake of those who are possessed of desire: therefore, O Arjuna! do thou abstain from desires."

Hear also the text of the Veda reprobatng the fruits of rites: "As in this world the fruits obtained from cultivation and labour perish, so in the next world fruits derived from rites are perishable." Also the Bhagavad Gita: "Also those who observe the rites prescribed by the three Vedas, and through those ceremonies worship me and seek for heaven, having become sinless from eating the remains of offerings, ascending to heaven, and enjoying the pleasures of the gods, after the completion of their rewards, again return to earth. Therefore, the observers of rites for the sake of rewards, repeatedly, ascend to heaven, and return to the world, and cannot obtain absorption."

Advocate. Though what you have advanced from the Veda and sacred codes against the practice of Concremation and Postcremation, is not to be set aside, yet we have had the practice prescribed by Harita and others handed down to us.

Opponent. Such an argument is highly inconsistent with justice. It is every way improper to persuade to self-destruction by citing passages of inadmissible authority. In the second place, it is evident from your own authorities, and the Sankalpa recited in conformity with them, that the widow should voluntarily quit life, ascending the flaming pile of her husband. But, on the contrary, you first bind down the widow along with the corpse of her husband, and then heap over her such a quantity of wood that she cannot rise. At the time too of setting fire to the pile, you press her down with large bamboos. In what passage of Harita or the rest do you find authority for thus binding the woman according to your practice? This then is, in fact, deliberate female murder.

Advocate. Though Harita and the rest do not indeed authorize this practice of binding, &c., yet were a woman after having recited

the Sankalpa not to perform Concremation, it would be sinful, and considered disgraceful by others. It is on this account that we have adopted the custom.

Opponent. Respecting the sinfulness of such an act, that is mere talk : for in the same codes it is laid down, that the performance of a penance will obliterate the sin of quitting the pile. Or in case of inability to undergo the regular penance, absolution may be obtained by bestowing the value of a cow, or three kahans of cowries. Therefore the sin is no cause of alarm. The disgrace in the opinion of others is also nothing : for good men regard not the blame or reproach of persons who can reprobate those who abstain from the sinful murder of women. And do you not consider how great is the sin to kill a woman ; therein forsaking the fear of God, the fear of conscience, and the fear of the Sastras, merely from a dread of the reproach of those who delight in female murder ?

Advocate Though tying down in this manner be not authorized by the Sastras, yet we practise it as being a custom that has been observed throughout Hindustan.

Opponent. It never was the case that the practice of fastening down widows on the pile was prevalent throughout Hindustan : for it is but of late years that this mode has been followed, and that only in Bengal, which is but a small part of Hindustan. No one besides who has the fear of God and man before him, will assert that male or female murder, theft, &c., from having been long practised, cease to be vices. If, according to your argument, custom ought to set aside the precepts of the Sastras, the inhabitants of the forests and mountains who have been in the habits of plunder, must be considered as guiltless of sin, and it would be improper to endeavour to restrain their habits. The Sastras, and the reasonings connected with them, enable us to discriminate right and wrong. In those Sastras such female murder is altogether forbidden. And reason also declares, that to bind down a woman for her destruction, holding out to her the inducement of heavenly rewards, is a most sinful act.

Advocate. This practice may be sinful or any thing else, but we will not refrain from observing it. Should it cease, people would generally apprehend that if women did not perform Concremation on the death of their husbands, they might go astray ; but if they burn themselves this fear is done away. Their family and relations are freed from apprehension. And if the husband could be assured

during his life that his wife would follow him on the pile, his mind would be at ease from apprehensions of her misconduct.

Opponent. What can be done, if, merely to avoid the possible danger of disgrace, you are unmercifully resolved to commit the sin of female murder. But is there not also a danger of a woman's going astray during the life-time of her husband, particularly when he resides for a long time in a distant country? What remedy then have you got against this cause of alarm?

Advocate. There is a great difference betwixt the case of the husband's being alive, and of his death; for while a husband is alive, whether he resides near or at a distance, a wife is under his control; she must stand in awe of him. But after his death that authority ceases, and she of course is divested of fear.

Opponent. The Sastras which command that a wife should live under the control of her husband during his life, direct that on his death she shall live under the authority of her husband's family, or else under that of her parental relations; and the Sastras have authorized the ruler of the country to maintain the observance of this law. Therefore, the possibility of a woman's going astray cannot be more guarded against during the husband's life than it is after his death. For you daily see, that even while the husband is alive, he gives up his authority, and the wife separates from him. Control alone cannot restrain from evil thoughts, words, and actions; but the suggestions of wisdom, and the fear of God may cause both man and woman to abstain from sin. Both the Sastras and experience show this.

Advocate. You have repeatedly asserted, that from want of feeling we promote female destruction. This is incorrect, for it is declared in our Veda and codes of law, that mercy is the root of virtue, and from our practice of hospitality, &c., our compassionate dispositions are well known.

Opponent. That in other cases you shew charitable dispositions is acknowledged. But by witnessing from your youth the voluntary burning of women amongst your elder relatives, your neighbours and the inhabitants of the surrounding villages, and by observing the indifference manifested at the time when the women are writhing under the torture of the flames, habits of insensibility are produced. For the same reason, when men or women are suffering the pains of death, you feel for them no sense of compassion, like the worshippers

of the female deities who, witnessing from their infancy the slaughter of kids and buffaloes, feel no compassion for them in the time of their suffering death, while followers of Vishnu are touched with strong feelings of pity.

Advocate. What you have said I shall carefully consider.

Opponent It is to me a source of great satisfaction, that you are now ready to take this matter into your consideration. By forsaking prejudice and reflecting on the Sastra, what is really conformable to its precepts may be perceived, and the evils and disgrace brought on this country by the crime of female murder will cease.

**A
SECOND CONFERENCE
BETWEEN
AN ADVOCATE FOR,
AND
AN OPPONENT OF THE PRCTICE
OF
BURNING WIDOWS ALIVE.**

CALCUTTA :

1820.

TO
THE MOST NOBLE
THE MARCHIONESS OF HASTINGS,
COUNTESS OF LOUDOUN, &c., &c.

THE following tract, being a translation of a Bengalee Essay, published some time ago, as an appeal to reason in behalf of humanity, I take the liberty to dedicate to YOUR LADYSHIP; for to whose protection can any attempt to promote a benevolent purpose be with so much propriety committed?

I have the honour to remain, with the greatest respect,

YOUR LADYSHIP'S

Most obedient servant,

THE AUTHOR.

ON CONCREMATION ;

A SECOND CONFERENCE BETWEEN AN ADVOCATE AND AN OPONENT OF THAT PRACTICE.

Advocate. UNDER the title of Vidhayak, or Preceptor, I have offered an answer to your former arguments. That, no doubt, you have attentively perused. I now expect your reply.

Opponent. I have well considered the answer that, after the lapse of nearly twelve months, you have offered. Such parts of your answer as consist merely of a repetition of passages already quoted by us, require no further observations now. But as to what you have advanced in opposition to our arguments and to the Sastras, you will be pleased to attend to my reply.

In the first place, at the bottom of your 4th page you have given a particular interpretation to the following words of Vishnu, the lawgiver :—

“ Mrite bhartari brahmacharyam tadanwarohanam va ”* meaning “after the death of her husband a woman shall become an ascetic, or ascend the funeral pile,” and implying that either alternative is optional. To this, you say, eight objections are found in the Sastras, therefore one of the alternatives must be preferred : that is to say, the woman who is unable to ascend the flaming pile shall live as an ascetic. This you maintain is the true interpretation ; and in proof you have cited the words of the Skanda Purana and of Angira. I answer. In every country all persons observe this rule that meanings are to be inferred from the words used. In this instance the text of Vishnu is comprised in five words : 1st, Mrite, “on death,” 2nd, bhartari, “of a husband,” 3rd, brahmacharyam, “asceticism,” 4th, tadanwarohanam, “ascending his pile,” 5th, va, “or.” That is, “on the death of a husband, *his widow should* become an ascetic, or ascend his pile.” It appears, therefore, from asceticism being mentioned first in order, that this is the most pious conduct for a widow to follow. But your interpretation, that this alternative is only left for widows who are

* मृते भर्तारि ब्रह्मचर्यं तदन्वारोहणं वा ।

unable to ascend the flaming pile, can by no means be deduced from the words of the text ; nor have any of the expounders of the Sastras so expressed themselves.

For instance, the author of the Mitakshara, whose authority is always to be revered, and whose words you have yourself quoted as authority in p. 27, has thus decided on the subject of Concremation :—
“The widow who is not desirous of final beatitude, but who wishes only for a limited term of a small degree of future fruition, is authorized to accompany her husband.”*

The Smarta Bhattacharya (Raghunandana, the modern law commentator of Bengal) limited the words of Angira, that “besides Concremation there is no other pious course for a widow,” by the authority of the foregoing text of Vishnu ; and authorized the alternative of a widow living as an ascetic, or dying with her husband, explaining the words of Angira as conveying merely the exaggerated praise of Concremation.

Secondly. From the time that Sastras have been written in Sanskrit, no author or man of learning has ever asserted, as you have done, that the person who, desirous of the enjoyments of heaven, is unable to perform the rites leading to fruition, may devote himself to the attainment of final beatitude. On the contrary, the Sastras uniformly declare that those who are unable to pursue final beatitude, may perform rites, but without desire ; and persons of the basest minds who do not desire eternal beatitude, may even perform rites for the sake of their fruits.

As V sishtia declares :—

“The person who does not exert himself to acquire that knowledge of God which leads to final absorption, may perform ceremonies without expectation of reward.”†

“To encourage and improve those ignorant persons, who looking only to pleasure, cannot distinguish betwixt what is God and not God, the Sruti has promised rewards.”‡

* अतश्च मोक्षमनिच्छन्त्या अनित्याल्पसुखरूपस्वर्गार्थिन्या
अनुगमनं युक्तमितरकाम्यानुष्ठानवदिति सर्वमनवद्यं ।

† यस्मै न रोचते ज्ञानं अध्यात्मं मोक्षसाधनं ।
ईशार्पितेन चित्तेन यजेन्निष्कामकर्मणा ॥

‡ मूढानां भोगदृष्टीनां आत्मानात्माविवेकिनां ।
रुचये चाधिकाराय विदधाति फलं श्रुतिः ॥

Bhagavad Gita.

"If you are unable to acquire by degrees divine knowledge, be diligent in performing works with a view to please me, that by such works you may acquire a better state. If you are unable even to perform rites solely for my sake, then, controlling your senses, endeavour to perform rites without the desire of fruition."*

Therefore, to give the preference to self-immolation, or to the destruction of others, for the sake of future reward, over asceticism, which gives a prospect of eternal beatitude, is to treat with contempt the authorities of the Vedas, the Vedanta, and other Darsanas, as well as of the Bhagavad Gita and many others. As the Veda says —

"Knowledge and rites both offer themselves to man; but he who is possessed of wisdom, taking their respective nature into serious consideration, distinguishes one from the other, and chooses faith, despising fruition; while a fool, for the sake of advantage and enjoyment, accepts the offer of rites."†

Without entirely rejecting the authority of the Gita, the essence of all Sastras, no one can praise rites performed for the sake of fruition, nor recommend them to others; for nearly half of the Bhagavad Gita is filled with the dispraise of such works, and with the praise of works performed without desire of fruition. A few of those passages have been quoted in the former conference, and a few others are here given.

"Works performed, except for the sake of God, only entangle the soul. Therefore, O Arjuna, forsaking desire perform works with the view to please God."‡

* अभ्यासेऽप्यसमर्थोऽसि मत्कर्मपरमो भव ।

मदर्थमपि कर्माणि कुर्वन् सिद्धिं मवाप्स्यसि ॥

अथैतदप्यशक्तीसि कर्तुं मद्योगमाश्रितः ।

सर्वकर्मफलत्यागं ततः कुरु यतात्मवान् ॥

† श्रेयश्च प्रेयश्च मनुष्यमेतस्तौ सम्परीत्य विविनक्ति धीरः ।

भयोहि धीरोऽभिप्रेयसी वृषीति प्रेयी मन्दो योगक्षेमाद्वृषीति ॥

‡ यश्चार्यात् कर्मणोऽन्यत्र लोकोऽयं कर्मबन्धनः ।

तदर्थं कर्म कौन्तेय मुक्तसङ्गः समाचर ॥

"The person who performs works without desire of fruition, directing his mind to God, obtains eternal rest. And the person who is devoted to fruition, and performs works with desire, he is indeed inextricably involved."^{*}

"Oh, Arjuna, rites performed for the sake of fruition are degraded far below works done without desire, which lead to the acquisition of the knowledge of God. Therefore perform thou works without desire of fruition, with the view of acquiring divine knowledge. Those who perform works for the sake of fruition are most debased."[†]

"It is my firm opinion, that works are to be performed forsaking their consequences, and the prospect of their fruits."[‡]

The Gita is not a rare work and you are not unacquainted with it. Why then do you constantly mislead women, unacquainted with the Sastras, to follow a debased path, by holding out to them as temptations the pleasure of futurity, in defiance of all the Sastras, and merely to please the ignorant?

You have said, that eight objections are to be found in Sastras to the optional alternative deduced from the works of Vishnu. To this I reply.

First. To remove an imaginary difficulty, a violation of the obvious interpretation of words, whose meaning is direct and consistent, is altogether inadmissible.

Secondly. Former commentators, finding no such objection to the interpretation given to the words of Vishnu, as following the optional alternative of asceticism or Concremation, have given the preference to asceticism. The author of the Mitakshara, quoting this text of Vishnu in treating of Concremation, makes no allusion to such an objection, but finally declares in favour of asceticism.

* युक्तः कर्मफलं त्यक्त्वा शान्तिमाप्नोति भैष्ठिकी ।

अयुक्तः कामकारेण फले सक्तो निबध्नते ॥

† दुरेणुश्च वरं कर्म बुद्धियोगाद्धनञ्जय ।

दुर्दो शरणमन्विच्छ कृपणाः फलोद्दतयः ॥

‡ एतान्यपि तु कर्मणि सङ्गं त्यक्त्वा फलाणि च ।

कर्तव्यासीति मे पार्थ निश्चितं मतमुत्तमं ॥

Thirdly Even allowing an optional alternative to be liable to the eight objections, former authors have on many occasions admitted such an alternative. For example :—

Sroth "Oblations are to be made of wheat or of barley."* But the meaning of this is not, according to your mode of interpretation, "That if it cannot be made of barley, an offering is to be made of wheat."

"Burnt offering is to be made at sunrise or before sunrise."† In this instance your mode of explanation may be applied; but no authors have ever given such an interpretation, but all have admitted the alternative to be optional.

उपासीत जगन्नाथं शिवम्वा जगत्तं पति ।

Here also, according to your opinion, the meaning would be, that if you cannot worship Siva you should worship Vishnu. But no authors have ever given such an interpretation to those words, and to give more or less worship to Siva than to Vishnu is quite contrary to the decision of all the Sastras.

Fourthly. The following text has also been quoted by you in opposition to the optional alternative in question, taken as you assert from the Skanda Purana :—

"On the death of her husband, if by chance a woman is unable to perform Concremation, nevertheless she should preserve the virtue required of widows. If she cannot preserve that virtue, she must descend to hell."‡ To confirm this text you have quoted the words of Angria :—"There is no other pious course for a widow besides Concremation;" § which you have interpreted, that "for a widow there is no other course so pious."

I answer, the words of Angria are express, that there is no other pious course for a widow than Concremation. And the Smarta commentator, having thus interpreted the text in reconciling it with the words of Vishnu already quoted, declares, that it conveys merely exaggerated praise of Concremation.

* ब्राह्मिर्भयजेत यवैर्यजेत ।

† उदिते जुहोति अनुदिते जुहोति ॥

‡ अनुयाति न भर्तारं यदि दैवात् कथञ्चन ।

तथापि शीलं संरक्ष्यं शीलमज्ञात् पतत्पथः ॥

§ नान्यो हि धर्मो विज्ञेयो मृते भर्तारि कर्हिचित् ।

But you, in opposition to the true meaning of the expression and to the interpretation given by the Smarta commentator, have explained those words to suit your own argument, that there is no other course more pious than that of Concremation. Perverting thus the meaning of the Sastras, what benefit do you propose by promoting the destruction of feeble woman, by holding up the temptation of enjoyments in a future state ? This I am at a loss to understand.

If the passage you have quoted from the Skanda Purana really exist, the mode in which the Smarta commentator has explained the words of Angira ("there is no other virtuous course,") must be applied to those of the Skanda Purana, viz., that the text of the Skanda Purana which contradicts Manu, Vishnu, and others, is to be understood as merely conveying exaggerated praise ; because, to exalt Concremation, which leads to future enjoyments that are treated as despicable by the Upanishads of the Vedas and Smriti, and by the Bhagavad Gita, above asceticism, in which the mind may be purified by the performance of works without desire, that may lead to eternal beatitude, is every way inadmissible, and in direct opposition to the opinions maintained by ancient authors and commentators.

SECTION II.

In the latter end of the 7th page you have admitted, that the sayings of Angira, Vishnu, and Harita, on the subject of Concremation, are certainly at variance with those of Manu : but assert, that any law given by Manu, when contradicted by several other lawgivers, is to be considered annulled :—therefore, his authority in treating of the duties of widows is not admissible, on account of the discord existing between it and passages of Harita, and Vishnu and others. With a view to establish this position you have advanced three arguments. The first of them is, that Vrihaspati says, "whatever law is contrary to the law of Manu, is not commendable,"* in which the nominative case, "whatever law," as being used in the singular number, signifies, that in case laws, given by a single person, stand in opposition to those of Manu they are not worthy of reverence, but if several persons differ from Manu in any certain point, his authority must be set aside. I reply. It has been the invariable practice of ancient and modern authors, to explain all texts of law so as to make them coincide with

* मन्वर्षविपरीता वा सा स्याति न प्रशस्यते ।

the law of Manu. They in no instance declare that the authority of Manu is to be set aside, in order to admit that of any other lawgiver. But you have, on the contrary, set aside the authority of Manu, on the ground of inconsistency with the words of two or three other authors. In this you not only act contrary to the practice of all commentators, but moreover in direct opposition to the authority of the Veda, for the Veda declares, whatever Manu lays down, that is commendable,"* which text you have yourself quoted in p. 7. And as to what you have said respecting the words of Vrihaspati as being in the singular number, and therefore only applicable to a case in which Manu is opposed by only one lawgiver, it is obvious that the word "whatever," being a general term, includes every particular case falling under it; and therefore his law must be followed, whatever number of authors there may be who lay down a different direction. And the reason of this is expressed in the former part of the verse of Vrihaspati, that "Manu has in his work collected the meaning of the Vedas." From this it follows that whatever law is inconsistent with the code of Manu, which is the substance of the Veda, is really inconsistent with the Veda itself, and therefore inadmissible. Admitting the justice of your explanation of Vrihaspati's text, that the authority of any individual lawgiver, who is inconsistent with Manu, must be set aside, but that when several authorities coincide in laying down any rule inconsistent with his law, they are to be followed, one might on the same principle give a new explanation to the following text:—

"The person who attempts to strike a Brahman goes to the hell called Satnayāt, or of a hundred punishments; and he who actually strikes a Brahman, goes to the hell of Sahasrayāt, or a thousand punishments."†

Here, also, the noun in the nominative case, and that in the accusative case also, are both in the singular number; therefore, according to your exposition, where two or three persons concur in beating a Brahman, or where a man beats two or three Brahmans, there is no crime committed. There are many similar instances of laws, the force of which would be entirely frustrated by your mode of interpretation.

You have argued in the second place that the practice of Concremation is authorized by a text of the Rig Veda, and consequently the

* यत् किञ्चिन्मनुगवदसद्वै भेषजं । श्रुतिः ।

† यो ब्राह्मणाय वायुरेवं शतेन यातयात् योनिहन्यात् तं सहस्रेण । श्रुतिः

authority of Manu is superseded by a higher authority. I reply. In the 12th line of the 9th page of your tract, you have quoted and interpreted a text of the Vedas, expressing "that the mind may be purified so as to seek a knowledge of God from which absorption may accrue, by the performance of the daily and occasional ceremonies, without the desire of fruition ; therefore, while life may be preserved, it ought not to be destroyed." With this then and all similar texts, there is the most evident concord with the words of Manu. Notwithstanding your admission to this effect, you assert that the authority of the Vedas contradicts the declaration of Manu. From the text already quoted, "that whatever Manu has declared is to be accepted," it follows that there can be no discrepancy between Manu and the Veda. But that is certainly an apparent inconsistency between the text quoted from the ceremonial part of the Rig Veda authorizing Concentration, and that above quoted from the spiritual parts of the Veda to which the celebrated Manu has given the preference, well aware that such parts of the Veda are of more authority than the passage relating to debased ceremonies. He has accordingly directed widows to live, practising austerities. The text of the Rig Veda, of course, remains of force to those ignorant wretches who are fettered with the desire of fruition, which debars them from the hope of final beatitude. This too has been acknowledged by yourself, in p. 11, line 17, and was also fully considered in the first Conference, p. 13, line 18. You cannot but be aware too, that when there is doubt respecting the meaning of any text of the Veda, that interpretation which has been adopted by Manu is followed by both ancient and modern authors. In the Bhavishya Purana, Mahadeva gave instructions for the performance of a penance for wilfully slaying a Brahman ; but observing that this was at variance with the words of Manu, which declare that there is no expiation for wilfully killing a Brahman, he does not set aside the text of Manu founded on the Vedas by his own authority, but explains the sense in which it is to be accepted :--"The object of the declaration of Manu that there is no expiation for the wilful murder of a Brahman, was the more absolute prohibition of the crime ; or it may be considered as applicable to Kshatriyas, and the other tribes."

* कामतो ब्राह्मणवधे यदेतन्मनुनोदितम् ।

एकान्ततो विप्रवधवर्जनार्थमुदीरितम् ।

यद्वा अत्रादिविषयमेतद् वचनं विदुः ॥

The great Mahadeva, then, did not venture to set aside the word of Manu, but you have proposed to set up the texts of Harita and Angira as of superior authority.

Thirdly. You have quoted, with the view of doing away with the authority of Manu the text of Jaimini, signifying that if there be a difference of opinion respecting a subject, then the decision of the greater number must be adopted; and therefore, as the authority of Manu, in the present instance, is at variance with several writers, it must yield to theirs. I reply. It is apparent that this text, as well as common sense, only dictates, that where those who differ in opinion are equal in point of authority, the majority ought to be followed; but if otherwise, this text is not applicable to the case. Thus the authority of the Veda, though single, cannot be set aside by the concurrent authorities of a hundred lawgivers; and in like manner the authority of Manu which is derived immediately from the Veda, cannot be set aside by the contradicting authorities of the others either singly or collectively. Moreover, if Angira, Harita, Vishnu, and Vyasa, authorized widows to choose the alternative of Concremation, or of living as ascetics, on the other hand, besides Manu, Yajnavalkya, Vasishtha, and several other lawgivers have prescribed asceticism only. Why, therefore, despising the authorities of Manu and others, do you persist in encouraging weak women to submit to murder, by holding out to them the temptations of future pleasures in heaven?

SECTION III.

The quotation from the Mundaka Upanishad and Bhagavad Gita, which we quoted in our first Conference, to shew the light in which rites should be held, you have repeated; and have also quoted some texts of the Vedas directing the performance of certain rites, such as, "He who desires heavenly fruition shall perform the sacrifice of horse."

In page 17 you have given your final conclusion on the subject to this effect: "That rites are not prohibited, but that pious works performed without desire are preferable to works performed for the sake of fruition; and he also who performs those works without desire, is superior to him who performs works for the sake of fruition." If then works without desire are acknowledged by you to

be superior to works with desire of fruition, why do you persuade widows to perform work for the sake of fruition, and do not recommend to them rather to follow asceticism, by which they may acquire eternal beatitude? And with respect to your assertion, that "rites are not prohibited," this is inconsistent with the Sastras; for if all the texts of the Vedas and lawgivers, prohibiting rites, were to be quoted, they would fill a large volume; (of these a few have been already quoted by me in pp. 5 and 6.) There are indeed Sastras directing the performance of rites for the sake of fruition, but these are acknowledged to be of less authority than those which prohibit such rites; as is proved by the following text from the Mundaka Upanishad: "Sastras are of two sorts, superior and inferior; of these the superior are those by which the Eternal God is approached."*

In the Bhagavad Gita Krishna says: "Amongst Sastras, I am those which treat of God."†

In the Sri Bhagavat is the following text: "Ill-minded persons, not perceiving that the object of the Veda is to direct us to absorption, call the superficially tempting promises of rewards their principal fruit; but such as know the Vedas thoroughly do not hold this opinion."‡

The passages directing works for the sake of fruition are therefore adapted only for the most ignorant. 'Learned men should endeavour to withdraw all those ignorant persons from works performed with desire, but should never, for the sake of profit, attempt to drown them in the abyss of passion. Raghunandana quotes and adopts the following words: "Learned men should not persuade the ignorant to perform rites for the sake of fruition, for it is written in the Purana, that he who knows the path to eternal happiness will not direct the ignorant to perform works with desire, as the good physician refuses to yield to the appetite of his patient for injurious food."§

* द्वे विधे वेदितव्यं परा चेवापरा च
अथ परा यया तदक्षरमधिगम्यते ।

† अर्ध्यात्मविद्या विद्यानां ।

‡ एवं व्यवसितं केचिद्विज्ञाय कुबुद्धयः ।

फलश्रुतिं कुसुमितां न वेदशा वदन्ति हि ॥

§ परिहृतेनापि मुखैः काम्येकर्मणि न प्रवर्तयितव्यः, भागवते,
स्वयं निःश्रेयसं विद्वान् न वक्तव्यज्ञाय कर्म हि ।

न राति रोगिणे पथ्यं वाञ्छतेपि भिषकृतमः ॥

to the Veda, on the general heads of that system as revealed by the holy sages." Ch. xii, v. 106. Vrihaspati. "Let no one found conclusions on the mere words of Sastras : from investigations without reason, religious virtue is lost."* As to the second position, I first beg to ask, whether or not it be meant by Jimutavahana's being styled a *commentator* that he wrote commentaries upon all or any of those sacred institutes. The fact is, that no one of those sacred institutes bears his comment. Should it be meant that the author of the Dayabhaga was so far a commentator, that he culled passages from different sacred institutes, touching every particular subject, and examining their purport separately and collectively, and weighing the sense deducible from the context, has offered that opinion on the subject which appeared to agree best with the series of passages cited collectively, and that when he has found one passage apparently at variance with another, he has laid stress upon that which seemed the more reasonable and more conformable to the general tenor, giving the other an interpretation of a subordinate nature, I readily concur in giving him the title of a commentator, though the word expounder would be more applicable. By way of illustration, I give here an instance of what I have advanced, that the reader may readily determine the sense in which the author of the Dayabhaga should be considered as a commentator.

15. In laying down rules "on succession to the estate of one who leaves no male issue," this author first quotes (Ch. xi, page 158) the following text of Vrihaspati: "In scripture and in the code of law, as well as in popular practice, a wife is declared by the wise to be half the body of her husband, equally sharing the fruit of pure and impure acts. Of him, whose wife is not deceased, half the body survives : how then should another take his property, while half his person is alive ? Let the wife of a deceased man, who left no male issue, take his share notwithstanding kinsmen, a father, a mother, or uterine brother, be present," &c., &c. He next cites the text of Yajnavalkya, (p. 190) as follows :—"The wife and the daughters, also both parents, brothers likewise, and their sons, gentiles, cognates, a pupil, and a fellow student : on failure of the first among these, the next in order is indeed heir to the estate of one, who departed for

* केवलं शास्त्रमाभित्य न कस्यचिदर्थनिर्णयः ।

दुस्तिहायविचारेण धर्महाभिः प्रजायते ॥ वृहस्पतिः ॥

"That man who considers the Being that is infinite, incomprehensible, pure, extending as far as space and time and vacuity, to be finite, perceptible by the senses, limited by time and place, subject to passion and anger, what crime is such a robber of Divine majesty not guilty of?"* That is, he is guilty of those sins which are considered as the most heinous, as well as of those that are considered ordinary sins. Therefore the words of so sinful a person can have no weight in the discussion of the legality of rites.

SECTION VIII.

You have stated in p. 2, that in the same manner as when part of a village or of a piece of cloth has been burnt, the village or piece of cloth is said to be burnt, so if a portion of the pile is inflamed, the whole pile may be said to be flaming. Therefore, it may with propriety be affirmed, that widows do in this country ascend the flaming pile.

I reply. You may afford gratification to those who take delight in woman-murder by such a quibble, but how can you avoid divine punishment by thus playing upon words?—for we find in the text of Harita and of Vishnu, the phrase "*Pravivesa hutasanam*," which means *entering into flames*, and the term "*Samaroheddhutasanam*," signifying *ascending the flames*. You have interpreted these directions in this way;—that, a considerable distance from the pile, fire may be placed, and a piece of grass or rope may connect the fire with the pile; and that thus, by ascending the pile, which has not been in the smallest degree affected by the fire, the widow may fulfil the direction of ascending and entering the flaming pile. But I beg to remark, that both in vulgar dialect and in Sanskrit, the word "*Praves*" expresses only the introgression of one substance into another; as for example, "*Griha pravesh koriachhilam*," *I entered the house*; the word entered cannot be used unless I actually passed into the house. If a long bamboo be attached to the house and a rope be fastened to that bamboo, no one can in any language say, that in merely touching that rope or bamboo he has entered that house. If a single billet of wood belonging to the pile were indeed inflamed, then you might say, according to your

* योऽन्यथा सन्तमात्मानं मन्यथा प्रतिपद्यते ।

किन्तेन न कृतं वापं यैरेवमाकाशमिति ॥ स्मृतिः ।

I reply You have stated in page 27, commencing at the 3rd line, that works without desire are preferable to those performed for the sake of fruition; while here again you say, that Concremation is preferable to asceticism. You have, however, assigned as a reason for your new doctrine, that Concremation saves progenitors as well as the husband. I have already shewn, that such promises of reward are merely held out to the most ignorant, in order to induce them to follow some kind of religious observance, and to withdraw from evil conduct. Therefore, to prefer works performed with a desire of fruition, to works without desire, merely on the ground of such exaggerated promises, is contrary to all the Sastras. If, in defiance of all the Sastras, you maintain that such promises of reward are to be understood literally, and not merely as incitements, still there can be no occasion for so harsh a sacrifice, so painful to mind and body, as burning a person to death in order to save her lines of Progenitors; for by making an offering of one ripe plantain to Siva, or a single flower of Karabir, either to Siva or to Vishnu, thirty millions of lines of progenitors may be saved.

"He, who maketh an oblation of a single ripe plantain to Siva, shall with thirty millions of races of progenitors ascend to the heaven of Siva."*

"By presenting a single Karabir, white or not white, to Vishnu or Siva, thirty millions of races of progenitors are exalted to heaven."†

Nor is there any want of promise of reward to those who perform works without desire. In fact, rather more abundant rewards are held out for such works than those you can quote for the opposite practice. "Those who have acquired knowledge in the prescribed mode can, by mere volition, save any number of progenitors; and all the gods offer worship to the devotees of the Supreme Being,"‡

* एकं मोक्षफलं पक्व यः शिवाय निवेदयेत्
त्रिकोटिकुलसंयुक्तः शिवलोके महीयते ॥

† एकेन करवीरेण सितेनाप्यसितेन वा ।
हरिं वा हरमभ्यर्च्य त्रिकोटिकुलमुद्धरेत् ॥

‡ सङ्कल्पाद्देवास्य पितरः समुत्तिष्ठन्ति,
सर्वे देवा अस्मै वलिमाहरन्ति ।

A volume filled with texts of this kind might be easily written. Moreover, should even the least part of any ceremony performed for reward be omitted or mistaken, the fruits are destroyed, and evil is produced. But there is no bad consequence from a failure in works performed without desire, for the completion of these, even in part, is advantageous. In proof I quote the Bhagavad Gita : " Works without desire, if only commenced, are never without advantage ; and if any member be defective, evil consequences do not ensue, as in works performed with desire. And the performance of even a small portion of a work without desire brings safety ".*

There is evidently a possibility of a failure in some portion of the rite of Concremation or Postcremation, particularly in the mode in which you perform the ceremony contrary to the directions of the Sastras. What connection is there betwixt that mode and the enjoyment of temporary heavenly gratifications—a mode which only subjects the widow to the consequences of a violent death ?

SECTION VI.

Again in p. 17, line 3, 'you admit it to be more commendable for a widow to attend to the acquisition of knowledge than to die by Concremation ; but afterwards, in order to persuade them to the practice of Concremation, and to prevent them from pursuing the acquisition of knowledge, you observe, that women are naturally prone to pleasure, are extremely devoted to works productive of fruits, and are always subject to their passions. To persuade such persons to forsake Concremation, in order to attempt the acquisition of knowledge is to destroy their hopes in both ways. In support of your opinion you have quoted the Gita : " Those ignorant persons who are devoted to works ought not to be dissuaded from performing them."†

I reply. Your object in persuading women to burn themselves may now be distinctly perceived ; you consider women, even of respectable classes, as prone to pleasure, and always subject to their passions ; and therefore you are apprehensive lest they should lose both prospects of hope, by giving up Concremation, and attempting

* नेहातिक्रमनाशोऽस्ति प्रत्यवायो न विद्यते ।

इदमप्यस्य धर्मस्य त्रायते महतो भयात् ॥

† न बुद्धिमेवं जनयेदज्ञानां कर्मसङ्गिनां ।

to acquire knowledge. For this reason you lead them to the destruction of their lives, by holding out to them the temptation of future rewards. It is very certain that all mankind, whether male or female, are endowed with a mixture of passions; but by study of the Sastras, and frequenting the society of respectable persons, those passions may be gradually subdued and the capability of enjoying an exalted state may be attained. We ought, therefore, to endeavour to withdraw both men and women from debased sensual pleasures, and not to persuade them to die with the hope of thereby obtaining sensual enjoyments, by which after a certain period of gratification, they are again immersed in the pollutions of the womb, and subjected to affliction. The Sastras have directed those men or women, who seek after a knowledge of God to hear and reflect upon this doctrine, that they may escape from the grievous pain of this world; and they have also prescribed daily and occasional rites to be performed without the hope of reward by those who do not seek after divine knowledge in order that their minds may be purified, and prepared to receive that knowledge. We, therefore, in conformity with the Sastra, make it our endeavour to dissuade widows from desiring future base and fleeting enjoyments, and encourage them to the acquisition of that divine knowledge which leads to final beatitude. Widows, therefore, by leading an ascetic life in the performance of duties without desire, may purify their minds and acquire divine knowledge, which may procure for them final beatitude. And consequently there is no reason why they should lose both objects of future hope by forsaking Concremation.

“Oh Arjuna, by placing their reliance on me, women and those of the lower classes of Vaisya and Sudra may obtain the highest exaltation.”*

You, however, considering women devoted to their passions and consequently incapable of acquiring divine knowledge, direct them to perform Concremation; and maintain that, if any amongst them should not burn with their husbands, according to your final decision from the Sastras, they must lose the hopes that belong to both practices; because according to your opinion, they are entirely incapable of acquiring divine knowledge, and by not adopting

* मां हि पापं व्याप्त्रित्य वेऽपि स्तुः सख्योनयः ।

विद्यो वेद्या स्तथा शुद्धास्तेऽपि यान्ति परां गतिम् ॥

Concremation, they give up the prospect of future gratifications. As to your quotation from the Gita, to show that persons devoted to works ought not to be dissuaded from the performance of them, it may be observed that this text applies only to rites offered without desire of rewards, though applied by you to works performed for the sake of future enjoyment, in direct inconsistency with the authority of the Gita. The object of this, as well as of all texts of the Gita, is to dissuade men from works performed with desire. The Gita and its Commentaries are both accessible to all. Let the learned decide the point.

You have quoted the following text of Vasishtha: "He who being devoted to worldly pleasures, boasts, saying, 'I am a knower of God,' can neither obtain the consequences procurable from works, nor attain final beatitude, the fruit of divine knowledge."*

I admit the force of this text. For whether a man be devoted to worldly pleasures or not, if he be a boaster either of divine knowledge or of any other acquirement, he is indeed most despicable; but I am unable to see how this text, which forbids vain glory, is applicable to the question before us, which relates to the Concremation of widows.

SECTION VII

In your 20th page, you have stated for us, that we do not object to the practice of Concremation, but to the tying down of the widow to the pile before setting it on fire. I reply. This is very incorrect, for it is a gross misrepresentation of our argument; because Concremation or Postcremation is a work performed for the sake of future reward, which the Upanishad and the Gita, and other Sastras, have declared to be most contemptible. Consequently, relying on those Sastras, it has been always our object to dissuade widows from the act of Concremation or Postcremation, that they might not, for the sake of the debased enjoyment of corporeal pleasures, renounce the attainment of divine knowledge. As to the mode in which you murder widows by tying them to the pile, we do exert ourselves to prevent such deeds, for those who are witnesses to an act of murder, and neglect to do anything towards its prevention, are accomplices in the crime.

* सांसारिकसुखासक्तं ब्रह्मज्ञोऽस्मीतिवादिनं ।
कर्म ब्रह्मोभयव्रतं इत्यादि ।

In justification of the crime of burning widows by force, you have stated, towards the foot of the same page, that in those countries where it is the custom for widows to ascend the flaming pile, there cannot be any dispute as to the propriety of following that mode; but where that is not the mode followed, and it is the practice for those that burn the corpse to place a portion of fire contiguous to the pile, so that it may gradually make its way to the pile, and at that time the widow, according to the prescribed form, ascends the pile, in this mode also there is nothing contrary to the Sastras. You have at the same time quoted two or three authorities to shew, that rites should be performed according to the custom of the country. I reply. Female murder, murder of a Brahman, parricide, and similar heinous crimes, cannot be reckoned amongst pious acts by alleging the custom of a country in their behalf; by such customs rather the country in which they exist is itself condemned. I shall write more at large to this purpose in the conclusion. The practice, therefore, of forcibly tying down women to the pile, and burning them to death, is inconsistent with the Sastras, and highly sinful. It is of no consequence to affirm, that this is customary in any particular country—if it were universally practised, the murders would still be criminal. The pretence that many are united in the commission of such murder will not secure them from divine vengeance. The customs of a country or of a race may be followed in matters where no particular rules are prescribed in the Sastras; but the wilful murder of widows, prohibited by all Sastras, is not to be justified by the practice of a few. From the Skanda Purana: “In those matters in which neither the Vedas nor lawgivers give either direct sanction or prohibition, the customs of a country or of a race may be observed.”*

If you insist that the practice of a country or of a race, though directly contrary to the directions of the Sastras, is still proper to be observed, and to be reckoned amongst lawful acts, I reply, that in Sivakanchi and Vishnukanchi, it is the custom of the people of all classes of one of those places, whether learned or ignorant, mutually, to revile the god peculiarly worshipped by the people of the other—those of Vishnukanchi despising Siva, and of Sivakanchi in the same manner holding Vishnu in contempt. Are the inhabitants of those

* न यत्र साक्षाद्विषयो न निषेधाः भ्रुती स्मृती ।

देहाचारकुलाचार स्तत्र धर्मो निरूप्यते ॥

places, whose custom it is thus to revile Siva and Vishnu not guilty of sin? For each of those tribes may assert, in their own defence, that it is the practice of their country and race to revile the god of the other. But no learned Hindu will pretend to say, that this excuse saves them from sin. The Rajputs, also, in the neighbourhood of the Doab, are accustomed to destroy their infant daughters; they also must not be considered guilty of the crime of child-murder, as they act according to the custom of their country and race. There are many instances of the same kind. No Pandits, then, would consider a heinous crime, directly contrary to the Sastras, as righteous, by whatever length of practice it may appear to be sanctioned.

You have at first alleged, that to burn a widow after tying her down on the pile, is one of the acts of piety, and have then quoted our argument for the opposite opinion, that "the inhabitants of forests and mountains are accustomed to robbery and murder: but must these be considered as faultless, because they follow only the custom of their country?" To this you have again replied, that respectable people are not to be guided by the example of mountaineers and foresters. But the custom of burning widows you say, "has been sanctioned by the most exemplary Pandits for a length of time. It is the custom, then, of respectable people that is to be followed, and not that of men of no principles." I answer. Respectability and want of respectability, depend upon the acts of men. If people of this province, who have been constantly guilty of the wilful murder of women by tying them to the pile in which they are burnt are to be reckoned amongst the respectable, then why should not the inhabitants of mountains and forests be also reckoned good, who perpetrate murder for the sake of their livelihood, or to propitiate their cruel deities? To shew that the custom of a country should be followed, you have quoted a text of the Veda, signifying that the example of Brahmans well versed in the Sastras, of good understanding, and whose practice is in conformity with reason and the Sastras, not subject to passion, and accustomed to perform good works, should be followed. And you have also quoted the words of Vyasa, signifying that the authorities of the Vedas and Sastras, as well as of reason, being various, the practice pointed out by illustrious men should be adopted. I reply. You have shewn that the example of men versed in the Sastras, and who act in conformity with reason and the Sastras, should be followed; but can you call those who, in defiance of the Sastras, wilfully put

women to death by tying them down to the pile on which they are burnt, illustrious, acquainted with the Vedas, and devoted to acts prescribed by the Sastras and by reason? If not, their example is to be disregarded. If you can call those, who wilfully tie down women to put them to death, righteous and illustrious, then there is no instance of unrighteousness and depravity. I have already said, that when any act is neither directly authorized nor prohibited by the Sastras, the custom of the country or of the race, should be the rule of conduct; but in the present case, the words are express in prescribing that the widow shall *enter* the flaming pile. But those who, in direct defiance of the authority of the Sastras, act the part of woman-murderers, in tying down the widow to the pile, and, subsequently applying the flame, burn her to death, can never exculpate themselves from the sin of woman-murder. As to the words you have quoted from the Skanda Purana, signifying that the arguments of one who has no faith in Siva and Vishnu can have no weight in the discussion of the legality of facts, I reply, this text is applicable to those who worship images. Those who worship forms under any name, and have no faith in Siva and Vishnu, their worship is vain, and their words to be disregarded. In the same way the words of the Kularnava: "He whose mouth does not give out the smell of wine and flesh, should perform a penance and be avoided, and is as an inferior animal. This is undoubted."* These words are applicable only to those who follow the Tantras; and if all such texts are considered otherwise applicable than in relation to the sects to whom they are directed, there is no possibility of reconciling the variances betwixt the different Sastras. The Sastras, treating of God, contains the following words: "Acts and rites that originate in movements of the hands, and other members of the body, being perishable, cannot effect beatitude that is eternal."†

"Those that worship forms under appellations, continue subject to form and appellation; for no perishable means can effect the acquisition of an imperishable end."‡

* अग्निवासवसौगन्धर्वीनं यस्य मुखं भवेत् ।

प्रायश्चित्ती म वज्रैश्च पशुरेव न संस्रवः ॥

† न ह्यधुवैः प्राप्यते हि ध्रुवं तत । कठमुतिः ।

‡ ध्यायन्तौ नामरूपाणि यान्ति तन्मयतां जनाः ।

अध्रवाइस्तु जाताञ्चि ध्रुवं नैवोपजायते ॥ स्मृतिः ।

"That man who considers the Being that is infinite, incomprehensible, pure, extending as far as space and time and vacuity, to be finite, perceptible by the senses, limited by time and place, subject to passion and anger, what crime is such a robber of Divine majesty not guilty of?"* That is, he is guilty of those sins which are considered as the most heinous, as well as of those that are considered ordinary sins. Therefore the words of so sinful a person can have no weight in the discussion of the legality of rites.

SECTION VIII.

You have stated in p. 2, that in the same manner as when part of a village or of a piece of cloth has been burnt, the village or piece of cloth is said to be burnt, so if a portion of the pile is inflamed, the whole pile may be said to be flaming. Therefore, it may with propriety be affirmed, that widows do in this country ascend the flaming pile.

I reply. You may afford gratification to those who take delight in woman-murder by such a quibble, but how can you avoid divine punishment by thus playing upon words?—for we find in the text of Harita and of Visṇu, the phrase "*Pravivesa hutasanam*," which means *entering into flames*, and the term "*Samaroheddhutasanam*," signifying *ascending the flames*. You have interpreted these directions in this way;—that, a considerable distance from the pile, fire may be placed, and a piece of grass or rope may connect the fire with the pile; and that thus, by ascending the pile, which has not been in the smallest degree affected by the fire, the widow may fulfil the direction of ascending and entering the flaming pile. But I beg to remark, that both in vulgar dialect and in Sanskrit, the word "*Praves*" expresses only the introgression of one substance into another; as for example, "*Griha pravesh koriachhilam*," *I entered the house*; the word entered cannot be used unless I actually passed into the house. If a long bamboo be attached to the house and a rope be fastened to that bamboo, no one can in any language say, that in merely touching that rope or bamboo he has entered that house. If a single billet of wood belonging to the pile were indeed inflamed, then you might say, according to your

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किन्तेन न कृतं पापं चौरैनात्मापहाराणा ॥ स्मृतिः ।

quibble regarding the burning of the cloth and of the village, that the pile was inflamed, and the flaming pile, entered; but even this is by no means the case, in the mode in which your pile is used. Unless, however, the pile is so completely in fire that the flames may surround the whole of her body, the woman cannot be said to enter into the flame. You must then, before you can justify your murder of helpless women, prepare a new dictionary; but there is no great probability of its interpretations being adopted by men of knowledge.

Towards the end of the 28th page you assert, that those who tie down the woman to the pile according to the custom of the country, are not guilty of violation of the Sastras: for it is to be understood from the words of Harita before quoted, that until her body be burnt, the widow cannot be delivered from female form, which implies that her body ought to be completely consumed; and that it is on this account that those who burn her make her fast to the pile, lest by accident any part of the dead body should fall out of the pile, and fail of being consumed, and in that case the burning be incomplete. This practice of tying down, therefore, is also conformable to the Sastra; and those who, in burning the woman, make her fast to the pile, are not therein guilty of any sin, but rather perform a pious act. In support of this assertion you have quoted the words of Apastamba, signifying that he who performs an act prescribed by the Sastras, or he who persuades or permits another to perform a prescribed act, ascends to heaven; and he who commits an act forbidden by the Sastra, or who persuades or permits another to perform a prohibited action, sinks to hell.

I reply. You mean to say, that it is not in order to avoid the danger of the widow's flying from the pile from fear of the flames, or from pain, that she is made fast—but merely, lest any fragments of the body should fall from the pile unburnt, that she is tied down to the pile while alive. I ask, is it with an iron chain that the woman is made fast, or with a common rope? For by securing the body by means of iron, the danger of portions of it being scattered from the pile may undoubtedly be avoided. But if, on the contrary, the body is bound with a common rope, the rope will be consumed before life has altogether quitted the body and the rope, when so burned, can be of no use in retaining within the pile, the members of the body. So far have Pandits been infatuated, in attempting to give the appearance of propriety to improper actions, that they

have even attempted to make people believe, that a rope may remain unconsumed amidst a flaming fire, and prevent the members of a body from being dispersed from the pile. Men of sense may now judge of the truth of the reason to which you ascribe the practice of tying down widows. All people in the world are not blind, and those who will go and behold the mode in which you tie down women to the pile, will readily perceive the truth or falsehood of the motives you assign for the practice. A little reflection ought to have convinced you of the light in which such an argument must be viewed, even by those of your friends who have the smallest regard for truth. As for the text you have quoted from Apastamba, it might have, with more propriety been cited by us, because it is established by that passage, that those who commit, persuade to, or permit an improper action, descend to hell; for those that are guilty of wilful woman-murder, by tying women down with ropes, and burning them to death, a practice unauthorized by the Sastras, and considered as most heinous, and those who persuade or permit others to do so, are certainly obnoxious to the denunciation of Apastamba. The pretext of custom of the country, or of the object of preventing portions of the body from being scattered, will not exculpate them.

You have written, in page 29, that those who, by the permission of the widow, increase the flames by throwing wood or straw on the pile, are meritorious: for he who without reward assists another in a pious act, is to be esteemed most meritorious. In confirmation, you have quoted an anecdote of the Matsya Purana, that a goldsmith, by affording his gratuitous assistance in a pious act, obtained a great reward. To this I have already replied: for if those who voluntarily commit woman-murder, by tying down a widow to the pile, and holding her down with bamboos to be burnt to death, are to be reckoned as performers of a pious act, those who assist them in so doing must be esteemed meritorious; but if this be a most heinous and debased crime, the promoters of it must certainly reap the fruits of woman-murder.

In your concluding paragraph you have quoted three texts, to prove the continual observance of this practice during all ages. The first recounting, that a dove entered into the flaming pile of her deceased husband. The second, that when Dhritarashtra was burning in the flames of his hermitage, his wife, Gandhari, threw herself into the fire. The wives of Vasudeva (the father of Krishna), of Balarama,

of Pradyumna, and of others, entered the flaming piles of their respective husbands. Those three instances occurred, as narrated by the Purana writers, within intervals of a few years towards the close of the Dwapara Yuga. You ought then to have quoted other instances, to shew the continual observance of this practice throughout all ages. Let that be as it may, you yourself cannot fail to know, that in former ages there were, as in later times, some who devoted themselves to the attainment of final beatitude, and others to the acquisition of future pleasure. Some too were virtuous, and some sinful; some believers, some sceptics. Amongst those, both men and women, who performed rites for reward, after enjoying pleasures in heaven, have again fallen to earth. Those Sastras themselves declare this fact; but in the Sastras that teach the path to final beatitude, the performance of rites for the sake of reward is positively forbidden. According to these Sastras, numberless women, in all ages, who were desirous of final beatitude, living as ascetics, attained their object. Evidence of this is to be found in the Mahabharata and other works: "The widows of the heroic Kurus, who fell valiantly with their faces to the foe, and were translated to the heaven of Brahma, performed only the prescribed ceremonies with water,"* and did not burn themselves on the piles of their husbands. I have, moreover, to request your attention to the fact, that in the three instances you have quoted, the very words "entered into fire" are used. In those three cases, then, it appears that the widows actually entered the flames, and therefore whatever widow in the present time does not enter the fire, but is burnt to death by others tying her down to the pile, has not performed the ceremony according to the ancient practice you have instanced; and from rites so performed she cannot even be entitled to the temporary enjoyment of heavenly pleasures: and those who tie her down, and pressing on her with bamboos, kill her, must, according to all Sastras, be considered guilty of the heinous crime of woman-murder.

SECTION IX.

Advocate. I alluded, in page 18, line 18, to the real reason for our anxiety to persuade widows to follow their husbands, and for our endeavours to burn them pressed down with ropes: viz., that women are by nature of inferior understanding, without resolution, unworthy

* उदके क्रियमाणे तु वीराणां वीरपत्नीभिः । इत्यादि ।

of trust, subject to passions, and void of virtuous knowledge ; they, according to the precepts of the Sastra, are not allowed to marry again after the demise of their husbands, and consequently despair at once of all worldly pleasure ; hence it is evident, that death to these unfortunate widows is preferable to existence ; for the great difficulty which a widow may experience by living a purely ascetic life, as prescribed by the Sastras, is obvious ; therefore, if she do not perform Concremation, it is probable that she may be guilty of such acts as may bring disgrace upon her paternal and maternal relations, and those that may be connected with her husband. Under these circumstances, we instruct them from their early life in the idea of Concremation, holding out to them heavenly enjoyments in company with their husbands, as well as the beatitude of their relations, both by birth and marriage, and their reputation in this world. From this many of them, on the death of their husbands, become desirous of accompanying them ; but to remove every chance of their trying to escape from the blazing fire, in burning them we first tie them down to the pile.

Opponent. The reason you have now assigned for burning widows alive is indeed your true motive, as we are well aware ; but the faults which you have imputed to women are not planted in their constitution by nature ; it would be, therefore, grossly criminal to condemn that sex to death merely from precaution. By ascribing to them all sorts of improper conduct, you have indeed successfully persuaded the Hindu community to look down upon them as contemptible and mischievous creatures, whence they have been subjected to constant miseries. I have, therefore, to offer a few remarks on this head.

Women are in general inferior to men in bodily strength and energy ; consequently the male part of the community, taking advantage of their corporeal weakness, have denied to them those excellent merits that they are entitled to by nature, and afterwards they are apt to say that women are naturally incapable of acquiring those merits. But if we give the subject consideration, we may easily ascertain whether or not your accusation against them is consistent with justice. As to their inferiority in point of understanding, when did you ever afford them a fair opportunity of exhibiting their natural capacity ? How then can you accuse them of want of understanding ? If, after instruction in knowledge and wisdom, a person cannot comprehend or retain what has been taught him, we may consider him

as deficient ; but as you keep women generally void of education and acquirements, you cannot, therefore, in justice pronounce on their inferiority. On the contrary, Lilavati, Bhanumati, the wife of the prince of Karnat, and that of Kalidasa, are celebrated for their thorough knowledge of all the Sastras : moreover in the Vrihadaranyaka Upanishad of the Yajur Veda it is clearly stated that Yajnavalkya imparted divine knowledge of the most difficult nature to his wife Maitreyi, who was able to follow and completely attain it !

Secondly. You charge them with want of resolution, at which I feel exceedingly surprised : for we constantly perceive, in a country where the name of death makes the male shudder, that the female, from her firmness of mind, offers to burn with the corpse of her deceased husband ; and yet you accuse those women of deficiency in point of resolution.

Thirdly. With regard to their trustworthiness, let us look minutely into the conduct of both sexes, and we may be enabled to ascertain which of them is the most frequently guilty of betraying friends. If we enumerate such women in each village or town as have been deceived by men, and such men as have been betrayed by women, I presume that the number of the deceived women would be found ten times greater than that of the betrayed men. Men are, in general, able to read and write, and manage public affairs, by which means they easily promulgate such faults as women occasionally commit, but never consider as criminal the misconduct of men towards women. One fault they have, it must be acknowledged ; which is, by considering others equally void of duplicity as themselves, to give their confidence too readily, from which they suffer much misery, even so far that some of them are misled to suffer themselves to be burnt to death.

In the fourth place, with respect to their subjection to the passions, this may be judged of by the custom of marriage as to the respective sexes ; for one man may marry two or three, sometimes even ten wives and upwards ; while a woman, who marries but one husband, desires at his death to follow him, forsaking all worldly enjoyments, or to remain leading the austere life of an ascetic.

Fifthly. The accusation of their want of virtuous knowledge is an injustice. Observe what pain, what alighting, what contempt, and what afflictions their virtue enables them to support ! How many Kulin Brahmans are there who marry ten or fifteen wives

for the sake of money, that never see the greater number of them after the day of marriage, and visit others only three or four times in the course of their life. Still amongst those women, most, even without seeing or receiving any support from their husbands, living dependent on their fathers or brothers, and suffering much distress, continue to preserve their virtue; and when Brahmans, or those of other tribes, bring their wives to live with them, what misery do the women not suffer? At marriage the wife is recognized as half of her husband, but in after-conduct they are treated worse than inferior animals. For the woman is employed to do the work of a slave in the house, such as, in her turn, to clean the place very early in the morning, whether cold or wet, to scour the dishes, to wash the floor, to cook night and day, to prepare and serve food for her husband, father, mother-in-law, sisters-in-law, brothers-in-law, and friends and connections! (for amongst Hindus more than in other tribes relations long reside together, and on this account quarrels are more common amongst brothers respecting their worldly affairs.) If in the preparation or serving up of the victuals they commit the smallest fault, what insult do they not receive from their husband, their mother-in-law, and the younger brothers of their husband? After all the male part of the family have satisfied themselves, the women content themselves with what may be left, whether sufficient in quantity or not. Where Brahmans or Kayasthas are not wealthy, their women are obliged to attend to their cows, and to prepare the cow-dung for firing. In the afternoon they fetch water from the river or tank, and at night perform the office of menial servants in making the beds. In case of any fault or omission in the performance of those labours they receive injurious treatment. Should the husband acquire wealth, he indulges in criminal amours to her perfect knowledge and almost under her eyes, and does not see her perhaps once a month. As long as the husband is poor, she suffers every kind of trouble, and when he becomes rich, she is altogether heart-broken. All this pain and affliction their virtue alone enables them to support. Where a husband takes two or three wives to live with him, they are subjected to mental miseries and constant quarrels. Even this distressed situation they virtuously endure. Sometimes it happens that the husband, from a preference for one of his wives, behaves cruelly to another. Amongst the lower classes, and those even of the better class who have not associated with good company, the wife, on the

alightest fault, or even on bare suspicion of her misconduct, is chastised as a thief. Respect to virtue and their reputation generally makes them forgive even this treatment. If unable to bear such cruel usage, a wife leaves her husband's house to live separately from him, then the influence of the husband with the magisterial authority is generally sufficient to place her again in his hands ; when, in revenge for her quitting him, he seizes every pretext to torment her in various ways, and sometimes even puts her privately to death. These are facts occurring every day, and not to be denied. What I lament is, that, seeing the women thus dependent and exposed to every misery, you feel for them no compassion, that might exempt them from being tied down and burnt to death.

ABSTRACT
OF
THE ARGUMENTS
REGARDING
THE BURNING OF WIDOWS,
CONSIDERED AS A RELIGIOUS RITE.

CALCUTTA:

1830.



ABSTRACT

OF

THE ARGUMENTS, &c.

SEVERAL ESSAYS, Tracts, and Letters, written in defence of or against the practice of burning Hindu widows alive have for some years past attracted the attention of the public. The arguments therein adduced by the parties being necessarily scattered, a complete view of the question cannot be easily attained by such readers as are precluded by their immediate avocations from bestowing much labour in acquiring information on the subject. Although the practice itself has now happily ceased to exist under the Government of Bengal,* nevertheless it seems still desirable that the substance of those publications should be condensed in a concise but comprehensive manner, so that enquirers may with little difficulty, be able to form a just conclusion, as to the true light in which this practice is viewed in the religion of Hindus. I have, therefore, made an attempt to accomplish this object, hoping that the plan pursued may be found to answer this end.

The first point to be ascertained is, whether or not the practice of burning widows alive on the pile and with the corpse of their husbands, is imperatively enjoyed by the Hindu religion? To this question even the staunch advocates for Concremation must reluctantly give a negative reply, and unavoidably concede the practice to the option of widows. This admission on their part is owing to two principal considerations, which it is now too late for them to feign to overlook. First, because Manu in plain terms enjoins a widow to "*continue till death forgiving all injuries, performing austere duties, avoiding every sensual pleasure, and cheerfully practising the incomparable rules of virtue which have been followed by such women as were devoted to*

*The administration to which this distinguished merit is due, consisted of Lord W. C. Bentinck, Governor-General, Viscount Combermere, Commander-in-Chief, W. B. P. Esq., and Sir C. T. Metcalfe, Members of Council.

one only husband." (ch. v., v. 158.)* So Yajnavalkya inculcates the same doctrine : " A widow shall live under care of her father, mother, son, brother, mother-in-law, father-in-law, or uncle ; since, on the contrary, she shall be liable to reproach." (*Vide Mitakshara, ch. i.*)† Secondly, because an attempt on the part of the advocates for Concremation to hold out the act as an incumbent duty on widows, would necessarily bring a stigma upon the character of the living widows, who have preferred a virtuous life to Concremation, as charging them with a violation of the duty said to be indispensable. These advocates, therefore, feel deterred from giving undue praise to a few widows, choosing death on the pile, to the disgrace of a vast majority of that class preferring a virtuous life. And in consideration of these obvious circumstances, the celebrated Smartha Raghunandana, the latest commentator on Hindu Law in Bengal, found himself compelled to expound the following passage of Angira, " there is no other course for a widow besides Concremation,"‡ as " conveying exaggerated praise of the adoption of that course." §

The second point is, that in case the alternative be admitted, that a widow may either live a virtuous life, or burn herself on the pile of her husband, it should next be determined whether both practices are esteemed equally meritorious, or one be declared preferable to the other. To satisfy ourselves on this question, we should first refer to the Vedas, whose authority is considered paramount, and we find in them a passage most pointed and decisive against Concremation, declaring that " From a desire, during life, of future fruition, life ought not to be destroyed." (*Vide Mitakshara, ch. i.*)|| While the advocates of Concremation quote a passage from the Vedas, of a very abstruse nature, in support of their position, which is as follows : " O fire, let these women, with bodies anointed with clarified

* आसीतामरणात् क्षान्ता नियता ब्रह्मचारिणी ।

यो धर्मो एकपत्नीनां काङ्क्षन्ती तमनुत्तमं ॥

† पितृमातृसुतभ्रातृश्वश्रूश्चशुरमातुलैः ।

हीना न स्यात् विना भर्त्रा गर्हणीयान्यथा भवेत् ॥

‡ नान्यो हि धर्मो विज्ञेयो मृते भर्तरि कर्हिचित् ।

§ नान्यो हि धर्म इति तु सहमरणस्तुत्यर्थे ।

॥ तः पादुह न पुरायुषः स्वःकामी प्रियात् ।

butter, eyes coloured with collyrium and void of tears, enter thee, the parent of water,* that they may not be separated from their husbands, themselves sinless, and jewels amongst women."† This passage (if genuine) does not, in the first place, enjoin widows to offer themselves as sacrifices; secondly, no allusion whatever is made in it to voluntary death by a widow *with the corpse of her husband*; thirdly, the phrase "these women" in the passage, literally implies women then present; fourthly, some commentators consider the passage as conveying an allegorical allusion to the constellations of the moon's path, which are invariably spoken of in Sanskrit in the feminine gender:—butter implying the milky path, collyrium meaning unoccupied space between one star and another, husbands signifying the more splendid of the heavenly bodies, and entering the fire, of, properly speaking, ascending it, indicating the rise of the constellations through the south-east horizon, considered as the abode of fire. Whatever may be the real purport of this passage, no one ever ventured to give it an interpretation as *commanding* widows to burn themselves on the pile and with the corpse of their husbands.

We next direct attention to the Smṛiti, as next in authority to the Vedas. Manu, whose authority supersedes that of other law-givers, enjoins widows to live a virtuous life, as already quoted. Yainavalkya and some others have adopted the same mode of exhortation. On the other hand, Angira recommends the practice of Concremation, saying, "That a woman who, on the death of her husband, *ascends the burning pile* with him, is exalted to heaven as equal to Arundhati."‡ So Vyasa says, "A pigeon devoted to her husband, after his death, *entered the flames*, and, ascending to heaven, she there found her husband."§ "She who follows her husband to another world, shall dwell in a region of glory for so many years as there are hairs in the human body, or thirty-five

* In Sanskrit writings, water is represented as originating in fire.

† इमा नारीरविधवाः सुपत्नीराजनेन सर्पिषा संविशन्त्यनम्रवा अनमोरा
मुरता आरोहन्तु यामयो योनिममेः ।

‡ मृते भर्तारि या नारी समारोहे बुताशनम् ।
सा रन्ध्रतीसमाचारा स्वर्गलोके महीयते ॥

§ पतिव्रता सप्रदीप्तं प्रविवेश हुताशनम् ।
तत्र विभ्राद्दधरं भर्तारं सान्वप्यत ॥

millions."* Vishnu, the saint, lays down this rule, "After the death of her husband, a wife should live as an ascetic or ascend his pile."† Harita and others have followed Angira in recommending Concremation.

The above quoted passages, from Angira and others, recommend Concremation on the part of widows, as means to obtain future carnal fruition and, accordingly, previous to their ascent on the pile, all widows invariably and solemnly declare future fruition as their object in Concremation. But the Bhagavadgita, whose authority is considered the most sacred by Hindus of all persuasions, repeatedly condemns rites performed for fruition. I here quote a few passages of that book. "All those ignorant persons who attach themselves to the words of the Sastras that convey promises of fruition, consider those extravagant and alluring passages as leading to real happiness, and say, besides them there is no other reality. Agitated in their minds by these desires, they believe the abodes of the celestial gods to be the chief object, and they devote themselves to those texts which treat of ceremonies and their fruits, and entice by promises of enjoyment. Such people can have no real confidence in the Supreme Being."‡ "Observers of rites, after the completion of their rewards, return to earth. Therefore they, for the sake of rewards, repeatedly ascend to heaven and return to the world, and cannot obtain eternal bliss."§

Manu repeats the same. "Whatever act is performed for the sake of gratification in this world or the next, is called Pravartak, as leading to the temporary enjoyment of the mansions of gods; and those which are performed according to the knowledge respecting

* तिस्रः कौटपर्षकोटी च यानि लोमानि मानवे ।

तावन्यद्दानि सा स्वर्गे भर्तारं यादुगच्छति ॥

† मृते भर्तारं ब्रह्मचर्यं तदन्वारोह्यं वा ।

‡ यामिमां पुष्पितां वाचं प्रवदन्त्यविपश्चितः ।

वेदवादरताः पार्थ नान्यदस्तीतिवादिनः ॥

कामात्मानः स्वर्गपरा जन्मकर्मफलप्रदाम् ।

क्रियाविशेषबहुलां भोगैश्वर्यगतिं प्रति ॥

भोगैश्वर्यप्रसक्तानां तयापहृतचेतसाम् ।

व्यक्तायात्मिका बुद्धिः समाधौ न विधीयते ॥

§ ते तं मुक्त्वा स्वर्गलोकं विशालं क्षीणे पुण्ये मर्त्यलोकं विशन्ति ।

एवं त्रयीधर्ममनुप्रपन्ना गतागतं कामकामा लभन्ते ॥

God are called Nivartak, as means to procure release from the five elements of this body ; that is, they obtain eternal bliss.*

The author of the Mitakshara, a work which is considered as a standard of Hindu Law throughout Hindustan, referring on the one hand to the authority of Manu, Yajnavalkya, the Bhagavadgita, and similar sacred writings, and to the passages of Angira, Harita and Vyasa on the other hand, and after having weighed both sides of the question, declares that "The widow who is not desirous of eternal beatitude, but who wishes only for a perishable and small degree of future fruition, is authorized to accompany her husband."† So that the Smartha Raghunandana, the modern expounder of Law in Bengal, classes Concremation among the rites holding out promises of fruition ; and this author thus inculcates : "Learned men should not endeavour to persuade the ignorant to perform rites holding out promises of fruition."‡. Hence, Concremation, in their opinion, is the least virtuous act that a widow can perform. §

The third and the last point to be ascertained is whether or not the mode of Concremation prescribed by Harita and others was ever duly observed. The passages recommending Concremation, as quoted by these expounders of law, require that a widow, resolving to die

* इह वामुत्र वा काम्यं प्रवृत्तं कर्म कीर्यते ।

निष्कामं ज्ञानयुज्यन्तु निवृत्तमुपदिश्यते ॥

प्रवृत्तं कर्म संसेव्य देवानामेति सार्णिताम् ।

निवृत्तं सेवमानस्तु मृतान्यत्येति पृथ्वे ॥

† अतश्च मोक्षमनिच्छन्त्या अनित्याल्पसुखरूपस्वर्गायिन्याः सहमरणादु-
मरणाद्वोरधिकारः इत्यप्राम्यानुष्ठानवत् ।

‡ पण्डितेनापि मूर्खः काम्ये कर्मणि न प्रवर्तयितव्यः ।

§ Hindus are persuaded to believe that Vyasa, considered as an inspired writer among the ancients, composed and left behind him numerous and voluminous works under different titles, as Maha-puranas, Sanhitas, Smritis, &c., &c., to an extent that no man, during the ordinary course of life, could prepare. These, however, with a few exceptions, exist merely in name, and those that are genuine bear the commentaries of celebrated authors. So the Tantras, or works ascribed to Siva as their author, are esteemed as consisting of innumerable millions of volumes, though only a very few, comparatively, are to be found. Debased characters among this unhappy people, taking advantage of this circumstance, have secretly composed forged works and passages, and published them as if they were genuine, with the view of introducing new doctrines, new rites, or new precepts of secular law. Although they have frequently succeeded by these means in working on the minds of the ignorant, yet the learned have never admitted the authority of any passage or work alleged to be sacred, unless it has been quoted or expounded by one of the acknowledged and authoritative commentators. It is now unhappily reported, that some advocates for the destruction of widows, finding

after the demise of her husband, should *voluntarily ascend* and enter the flames † to destroy her existence*; allowing her, at the same time, an opportunity of retracting her resolution, should her courage fail from the alarming sight or effect of the flames, and of returning to her relatives, performing a penance for abandoning the sacrifice, ‡ or bestowing the value of a cow on a Brahman. § Hence, as *voluntarily ascending* upon and *entering into the flames* are described as indispensably necessary for a widow in the performance of this rite, the violation of one of these provisions renders the act mere suicide, and implicates, in the guilt of female murder, those that assist in its perpetration, even according to the above quoted authorities, which are themselves of an inferior order. But no one will venture to assert, that the provisions, prescribed in the passages adduced, have ever been observed; that is, no widow ever voluntarily *ascended* on and *entered* into the *flames* in the fulfilment of this rite. The advocates for Concremation have been consequently driven to the necessity of taking refuge in *usage*, as justifying both suicide and female murder, the most heinous of crimes.

We should not omit the present opportunity of offering up thanks to Heaven, whose protecting arm has rescued our weaker sex from cruel murder, under the cloak of religion, and our character, as a people, from the contempt and pity with which it has been regarded, on account of this custom, by all civilized nations on the surface of the globe.

their cases unsupported by the passages cited by the author of the Mitakshara, by the Smartha Raghunandana, or by other exponents of Hindu law, have ungracefully adopted the trick of converting passages in the name of the Puranas or Tantras, conveying doctrines not only directly opposed to the decisive expositions of these celebrated teachers of law, but also evidently at variance with the purport of the genuine sacred passages which they have quoted. The passages thus forged are said to be calculated to give a preference to Concremation over virtuous life. I regret to understand that some persons belonging to the party opposing this practice, are reported to have had recourse to the same unworthy artifice, under the erroneous plea that stratagem justifies stratagem.

* समारोहेषु ताशानम् । Angira.

† पतिव्रता सम्प्रदातं प्रविशेश हुताशनम् । Vyasa.

‡ चित्तव्रष्टा तु या नारी मोहाद्विचक्षिता भवेत् ।

प्राजापत्येन शुद्धेषु तस्मादि पापकर्मजः ॥

§ प्राजापत्यव्रताशक्तौ धेनुं दद्यात् पयस्विनीम् ।

वेदीरमाणि दातव्यं तस्य मूल्यं न संशयः ॥

BRIEF REMARKS
REGARDING
MODERN ENCROACHMENTS
ON THE
ANCIENT RIGHTS OF FEMALES,
ACCORDING TO THE
HINDU LAW OF INHERITANCE.

CALCUTTA :

1822.

In 1856, Babu Rumaprusad Roy, son of the illustrious author, reprinted this treatise with the following introduction :—

“At this moment, when thousands of my countrymen have openly come forward to invoke the assistance of the Legislature to suppress the abominations of Kulin Polygamy, I have deemed it proper to re-print the following small Tract, published by the late Rajah Rammohun Roy in 1822. Those who have joined in the application to the Legislative body, will have the satisfaction to see that my revered father, so far back as 1822, entertained sentiments on the subject of Kulin Polygamy similar to those which have now moved them to act in a way so independent of their prejudices, and so well fitted to confer incalculable benefits on the Hindu Community.

CALCUTTA, *July 12, 1856.*

RUMAPRUSAD ROY.”

BRIEF REMARKS

REGARDING

MODERN ENCROACHMENTS

ON THE

ANCIENT RIGHTS OF FEMALES.

WITH a view to enable the public to form an idea of the state of civilization throughout the greater part of the empire of Hindustan in ancient days,* and of the subsequent gradual degradation intro-

* At an early age of civilization, when the division into castes was first introduced among the inhabitants of India, the second tribe, who were appointed to defend and rule the country, having adopted arbitrary and despotic practices, the others revolted against them; and under the personal command of the celebrated Parasuram, defeated the Royastans in several battles, and put cruelly to death almost all the males of that tribe. It was at last resolved that the legislative authority should be confined to the first class who could have no share in the actual government of the state, or in managing the revenue of the country under any pretence; while the second tribe should exercise the executive authority. The consequence was, that India enjoyed peace and harmony for a great many centuries. The Brahmans having no expectation of holding an office, or of partaking of any kind of political promotion, devoted their time to scientific pursuits and religious austerities, and lived in poverty. Freely associating with all the other tribes they were thus able to know their sentiments, and to appreciate the justness of their complaints, and thereby to lay down such rules as were required, which often induced them to rectify the abuses that were practised by the second tribe. But after the expiration of more than two thousand years, an absolute form of government came gradually again to prevail. The first class having been induced to accept employments in political departments, became entirely dependent on the second tribe, and so unimportant in themselves, that they were obliged to explain away the laws enacted by their fore-fathers, and to institute new rules according to the dictates of their contemporary princes. They were considered as merely nominal legislators, and the whole power, whether legislative or executive, was in fact exercised by the Rajputs. This tribe exercised tyranny and oppression for a period of about a thousand years, when Musulmans from Ghuznee and Ghore, invaded the country, and finding it divided among hundreds of petty princes, detested by their respective subjects, conquered them all successively, and introduced their own tyrannical system of government, destroying temples, universities and all other sacred and literary establishments. At present the whole empire (with the exception of a few provinces) has been placed under the British power, and some advantages have already been derived from the prudent management of its rulers, from whose general character a hope of future quiet and happiness is justly entertained. The succeeding generation will, however, be more adequate to pronounce on the real advantages of this government.

duced into its social and political constitution by arbitrary authorities, I am induced to give as an instance, the interest and care which our ancient legislators took in the promotion of the comfort of the female part of the community ; and to compare the laws of female inheritance which they enacted, and which afforded that sex the opportunity of enjoyment of life, with that which moderns and our cotemporaries have gradually introduced and established, to their complete privation, directly or indirectly, of most of those objects that render life agreeable.

All the ancient lawgivers unanimously award to a mother an equal share with her son in the property left by her deceased husband, in order that she may spend her remaining days independently of her children, as is evident from the following passages :

Yajnavalkya. "After the death of a father, let a mother also inherit an equal share with her sons in the division of the property left by their father."*

KATYAYANA. "The father being dead, the mother should inherit an equal share with the son."†

NARADA. "After the death of husband, a mother should receive a share equal to that of each of his sons."‡

VISHNU THE LEGISLATOR. "Mothers should be receivers of shares according to the portion allowed to the sons."§

VRINASPATI. "After his (the father's) death a mother, the parent of his sons, should be entitled to an equal share with his sons ; their step-mothers also to equal shares : but daughters to a fourth part of the shares of the sons."||

VIASA. "The wives of a father by whom he has no male issue, are considered as entitled to equal shares with his sons, and all the grand-mothers (including the mothers and step-mothers of the father), are said to be entitled as mothers."¶

* पितुरुद्धे विभजतां माताप्यंशं समं हरेत् ।

† माता च पितरि प्रेते पुत्रतुल्यांशहारिणी ।

‡ समांशहारिणी माता पुत्राणां स्यान्मृते पतौ

§ मातरः पुत्रभागानुसारभागहारिण्यः ।

|| तदभावे तु जननौ तनयांशसमांशिनी ।

समांशा मातरस्त्वेषां तुलीयांशास्तु कन्यकाः ॥

¶ असुतास्तु पितुः कन्यः समानांशाः प्रकीर्तिताः ।

पितामहश्च ताः सर्वा मृद्वृत्या प्रकीर्तिताः ॥

This Muni seems to have made this express declaration of rights of step-mothers, omitting those of mothers, under the idea that the latter were already sufficiently established by the direct authority of preceding lawgivers.

We come to the moderns.

The author of the *Dayabhaga* and the writer of the *Dayatattwa*, the modern expounders of Hindu law (whose opinions are considered by the natives of Bengal as standard authority in the division of property among heirs) have thus limited the rights allowed to widows by the above ancient legislators. When a person is willing to divide his property among his heirs during his lifetime, he should entitle only those wives by whom he has no issue, to an equal share with his sons; but if he omit such a division, those wives can have no claim to the property he leaves. These two modern expounders lay stress upon a passage of *Yajnavalkya*, which requires a father to allot equal shares to his wives, in case he divides his property during his life, whereby they connect the term "of a father," in the above quoted passage of *Vyasa*, viz., "the wives of a father, &c.," with the term "division" understood, that is, the wives by whom he has no son, are considered in the division made by a father, as entitled to equal shares with his sons; and that when sons may divide property among themselves after the demise of their father, they should give an equal share to their mother only, neglecting step-mothers in the division. Here the expounders did not take into their consideration any proper provision for step-mothers, who have naturally less hope of support from their step-sons than mothers can expect from their own children.

In the opinion of these expounders even a mother of a single son should not be entitled to any share. The whole property should, in that case, devolve on the son; and in case that son should die after the succession to the property, his son or wife should inherit it. The mother in that case should be left totally dependent on her son or on her son's wife. Besides, according to the opinion of these expounders, if more than one son should survive, they can deprive their mother of her title, by continuing to live as a joint family (which has been often the case,) as the right of a mother depends, as they say, on division, which depends on the will of the sons.

Some of our contemporaries, (whose opinion is received as a verdict by Judicial Courts,) have still further reduced the right of a

object of the new seminary. Therefore their more diligent cultivation, if desirable, would be effectually promoted, by holding out premiums and granting certain allowances to their most eminent professors, who have already undertaken on their own account to teach them, and would by such rewards be stimulated to still greater exertion.

From these considerations, as the sum set apart for the instruction of the natives of India was intended by the Government in England for the improvement of its Indian subjects, I beg leave to state, with due deference to your Lordship's exalted situation, that if the plan now adopted be followed, it will completely defeat the object proposed, since no improvement can be expected from inducing young men to consume a dozen years of the most valuable period of their lives, in acquiring the niceties of Vyakaran or Sanskrit Grammar, for instance, in learning to discuss such points as the following : *khada*, signifying to eat, *khadati* he or she or it eats, query, whether does *khadati* taken as a whole convey the meaning he, she or it eats, or are separate parts of this meaning conveyed by distinctions of the words, as if in the English language it were asked how much meaning is there in the *eat* and how much in the *s*, and is the whole meaning of the word conveyed by these two portions of it distinctly or by them taken jointly?

Neither can much improvement arise from such speculations as the following which are the themes suggested by the Vedanta,—in what manner is the soul absorbed in the Deity? What relation does it bear to the Divine Essence? Nor will youths be fitted to be better members of society by the Vedantic doctrines which teach them to believe, that all visible things have no real existence, that as father brother, &c., have no actual entity, they consequently deserve no real affection, and therefore the sooner we escape from them and leave the world the better.

Again, no essential benefit can be derived by the student of the *Mimansa* from knowing what it is that makes the killer of a goat sinless by pronouncing certain passages of the Vedanta and what is the real nature and operative influence of passages of the Vedas, &c.

The student of the Nyaya Sastra cannot be said to have improved his mind after he has learned from it into how many ideal classes the objects in the universe are divided and what speculative relation the all bears to the body, the body to the soul, the eye to the ear. &c.

It is not from religious prejudices and early impressions only, that Hindu widows burn themselves on the pile of their deceased husbands, but also from their witnessing the distress in which widows of the same rank in life are involved, and the insults and slights to which they are daily subjected, that they become in a great measure regardless of their existence after the death of their husbands: and this indifference, accompanied with the hope of future reward held out to them, leads them to the horrible act of suicide. These restraints on female inheritance encourage, in a great degree, polygamy, a frequent source of the greatest misery in native families; a grand object of Hindus being to secure a provision for their male offspring, the law, which relieves them from the necessity of giving an equal portion to their wives, removes a principal restraint on the indulgence of their inclinations in respect to the number they marry. Some of them, especially Brahmins of higher birth, marry ten, twenty or thirty women,* either for some small consideration, or merely to gratify their brutal inclinations, leaving a great many of them, both during their life-time and after their death, to the mercy of their own paternal relations. The evil consequences arising from such polygamy, the public may easily guess, from the nature of the fact itself, without my being reduced to the mortification of particularising those which are known by the native public to be of daily occurrence.

To these women there are left only three modes of conduct to pursue after the death of their husbands 1st. To live a miserable life as ^{sons,} on and slaves to others, without indulging any hope of support from a ^{father} husband. 2ndly. To walk in the paths of unrighteousness for their maintenance and independence. 3rdly. To die on the funeral pile of their husbands, loaded with the applause and honour of their neighbours. It cannot pass unnoticed by those who are acquainted with the state of society in India, that the number of female suicides in the single province of Bengal, when compared with those of any other British provinces, is almost ten to one: we may safely attribute this disproportion chiefly to the greater frequency of a plurality of wives among the natives of Bengal, and to their total neglect in providing for the maintenance of their females.

* The horror of this practice is so painful to the natural feelings of man that even Madhab Singh, the late Rajah of Tirhoot, (though a Brahmin himself), through compassion, took reason himself (I am told) within the last half century, to limit Brahmins of his estate to four wives only.

This horrible polygamy among Brahmins is directly contrary to the law given by ancient authors ; for Yajñavalkya authorizes second marriages, while the first wife is alive, only under eight circumstances : 1st. The vice of drinking spirituous liquors. 2ndly. Incurable sickness. 3rdly. Deception. 4thly. Barrenness. 5thly. Extravagance. 6thly. The frequent use of offensive language. 7thly. Producing only female offsprings. Or, 8thly. Manifestation of hatred towards her husband.*

Manu, ch. 9th, v. 80th. "A wife who drinks any spirituous liquors, who acts immorally, who shows hatred to her lord, who is incurably diseased, who is mischievous, who wastes his property, may at all times be superseded by another wife."†

81st. "A barren wife may be superseded by another in the eighth year ; she, whose children are all dead, in the tenth ; she, who brings forth only daughters, in the eleventh ; she, who is accustomed to speak unkindly, without delay."‡

82nd. "But she, who, though, afflicted with illness, is beloved and virtuous, must never be disgraced, though she may be superseded by another wife with her own consent."§

Had a Magistrate or other public officer been authorized by the rulers of the empire to receive applications for his sanction to a second marriage during the life of a first wife, and to grant his consent only on such accusations as the foregoing being substantiated, the above Law might have been rendered effectual, and the distress of the female sex in Bengal, and the number of suicides, would have been necessarily very much reduced.

According to the following ancient authorities a daughter is entitled to one-fourth part of the portion which a son can inherit.

* सुरापी व्याधिता घृता वन्ध्यायेध्याप्रियवदा ।

ओप्रसूषाधिवेत्तव्या एन्वदोषण। तथा ॥

† मयपासाधुवृत्ता च प्रतिकूला च या भवेत् ।

व्याधिता वाधिवेत्तव्या द्विस्वार्थग्री च सर्वदा ॥

‡ वन्ध्याष्टमेऽधिवेद्यन्ते दशमे तु मृतप्रजा ।

एकादशे जीवन्ती सद्यस्त्वप्रियवादिनी ॥

§ या रोगिणी स्यात्तु हिता सम्यग्भा चैव शीलतः ।

सानुष्ठाप्याधिवेत्तव्या नावमान्या च कर्हिचित् ॥

VRIHASPATI. "The daughters should have the fourth part of the portion to which the sons are entitled."*

VISHNU. "The rights of unmarried daughters shall be proportioned according to the shares allotted to the sons."†

MANU, ch. 9th, v. 118. "To the unmarried daughters let their brothers give portions out of their own allotments respectively. Let each give a fourth part of his own distinct share, and they who feel disinclined to give this shall be condemned."‡

YAJNAVALKYA. "Let such brothers as are already purified by the essential rites of life, purify by the performance of those rites the brothers that are left by their late father unpurified; let them also purify the sisters by giving them a fourth part of their own portion."§

KATYAYANA. || "A fourth part is declared to be the share of unmarried daughters, and three-fourths of the sons; if the fourth part of the property is so small as to be inadequate to defray the expenses attending their marriage, the sons have an exclusive right to the property, but shall defray the marriage ceremony of the sisters."

But the commentator on the Dayabhaga sets aside the right of the daughters, declaring that they are not entitled to any share in the property left by their fathers, but that the expenses attending their marriage should be defrayed by the brothers. He founds his opinion on the foregoing passage of Manu and that of Yajnavalkya, which as he thinks, imply mere donation on the part of the brothers from their own portions for the discharge of the expenses of marriage.

In the practice of our contemporaries a daughter or a sister is often a source of emolument to the Brahmas of less respectable caste, (who are most numerous in Bengal) and to the Kayasthas of high

* दुरीयांशास्तु कन्यकाः ।

† अन्तर्दाम दुहितरः पुत्रभागानुसारा ।

‡ स्वेभ्योऽशंभ्यस्तु कन्याभ्यः प्रदत्तुर्भ्रातरः पृथक् ।

स्वात् स्वादंशाच्चतुर्भागं पतिताः स्युरदिस्त्वः ॥

§ वसंस्कृतास्तु संस्कार्या भ्रातृभिः पूर्वसंस्कृतैः ।

मगिन्यश्च निजादंशादत्वांशान्तु दुरीयकम् ॥

|| कन्यकानां मदत्तानां चतुर्थोभाग उच्यते ।

पुत्राणाञ्च तयो भागाः स्वाम्यं स्वस्वपत्ने स्मृतम् ॥

caste. These so far from spending money on the marriage of their daughters or sisters, receive frequently considerable sums, and generally bestow them in marriage on those who can pay most.* Such Brahmins and Kayasthas, I regret to say, frequently marry their female relations to men having natural defects or worn out by old age or disease, merely from pecuniary considerations, whereby they either bring widowhood upon them soon after marriage or render their lives miserable. They not only degrade themselves by such cruel and unmanly conduct, but violate entirely the express authorities of Manu and all other ancient law-givers, a few of which I here quote.

MANU, ch. 3rd, v. 51. "Let no father, who knows the law, receive a gratuity, however small, for giving his daughter in marriage; since the man, who, through avarice, takes a gratuity for that purpose, is a seller of his offspring."†

Ch. 9th, v. 98. "But even a man of the servile class ought not to receive a gratuity when he gives his daughter in marriage, since a father who takes a fee on that occasion, tacitly sells his daughter."‡

V. 100. "Nor, even in former births, have we heard the virtuous approve the tacit sale of a daughter for a price, under the name of nuptial gratuity."§

KASAPA. "Those who, infatuated by avarice, give their own daughters in marriage, for the sake of a gratuity, are the sellers of their daughters, the images of sin, and the perpetrators of a heinous iniquity."||

*Rajah Krishnachandra, the great-grandfather of the present ex-Rajah of Nadia, prevented this cruel practice of the sale of daughters and sisters throughout his estate.

† न कन्यायाः पिता विद्वान् एष्टीयाद् शुल्कमप्यपि ।

एष्टुन् हि शुल्कं लोभेन स्यान्नरोऽपत्यविक्रयी ॥

‡ आदर्शित न शूद्रेऽपि शुल्कं दुहितरं ददत् ।

शुल्कं हि एष्टुन् कुरुते क्षत्रं दुहितविक्रयं ॥

§ नाशुशुभ्रम जात्ये तत् पूर्वैश्चपि हि जन्मसु ।

शुल्कसंबेन मूल्येन क्षत्रं दुहितविक्रयं ॥

|| शुल्केन ये प्रवच्छन्ति स्वसुतां लोभमोहिताः ।

कन्याविक्रयिणः पापा महाकिल्बिषकारिणः ॥

Both common sense, and the law of the land designate such a practice as an actual sale of females ; and the humane and liberal among Hindus, lament its existence, as well as the annihilation of female rights in respect of inheritance introduced by modern expounders. They, however, trust, that the humane attention of Government will be directed to those evils which are the chief sources of vice and misery and even of suicide among women ; and to this they are encouraged to look forward by what has already been done in modifying, in criminal cases, some parts of the law enacted by Muhammadan Legislators, to the happy prevention of many cruel practices formerly established.

How distressing it must be to the female community and to those who interest themselves in their behalf, to observe daily that several daughters in a rich family can prefer no claim to any portion of the property, whether real or personal, left by their deceased father, if a single brother be alive : while they (if belonging to a Kulin family or Brahman of higher rank) are expected to be given in marriage to individuals who have already several wives and have no means of maintaining them.

Should a widow or a daughter wish to secure her right of maintenance, however limited, by having recourse to law, the learned Brahmans, whether holding public situations in the courts or not, generally divide into two parties, one advocating the cause of those females and the other that of their adversaries. Sometimes in these or other matters respecting the law, if the object contended for be important, the whole community seems to be agitated by the exertions of the parties and of their respective friends in claiming the verdict of the law against each other. In general, however, a consideration of the difficulties attending a law suit, which a native woman, particularly a widow, is hardly capable of surmounting, induces her to forego her right ; and if she continue virtuous, she is obliged to live in a miserable state of dependence, destitute of all the comforts of life ; it too often happens, however, that she is driven by constant unhappiness to seek refuge in vice.

At the time of the decennial settlement in the year 1793, there were among European gentlemen so very few acquainted with Sanskrit and Hindu law that it would have been hardly possible to have formed a committee of European oriental scholars and learned Brahmans, capable of deciding on points of Hindu law. It was, therefore, highly judicious in Government to appoint Pandits in the

different Zillah Courts of Appeal, to facilitate the proceedings of Judges in regard to such subjects. But as we can now fortunately find many European gentlemen capable of investigating legal questions with but little assistance from learned Natives, how happy would it be for the Hindu community, both male and female, were they to enjoy the benefits of the opinion of such gentlemen. when disputes arise, particularly on matters of inheritance.

Lest any one should infer from what I have stated, that I mean to impeach, universally, the character of the great body of learned Hindus, I declare positively, that this is far from my intention. I only maintain, that the Native community place greater confidence in the honest judgment of European gentlemen than in that of their own countrymen. But, should the Natives receive the same advantages of education that Europeans generally enjoy, and be brought up in the same notions of honour, they will, I trust, be found, equally with Europeans, worthy of the confidence of their countrymen and the respect of all men.

ESSAY
ON
THE RIGHTS OF HINDOOS
OVER
ANCESTRAL PROPERTY,
ACCORDING TO
THE LAW OF BENGAL.

CALCUTTA :

1830.

PRELIMINARY NOTE.

THE translation into English, by the celebrated Mr. H. T. Colebrooke, of the DAYABHAGA, a work on Succession, and of an extract from the MITAKSHARA, comprising so much of the latter as relates to Inheritance, has furnished the principal basis of the arguments used in the following pages. I have also referred occasionally to the valuable remarks of that eminently learned scholar, in his preface and notes added to the original work. In quoting the Institutes of Manu, I have had recourse to the translation of this code of Law by the most venerable Sir WILLIAM JONES, that no doubt may be entertained as to the exactness of the interpretation. Only one text of Vrihaspati, the Legislator, and one passage quoted in another part of the *Mitakshara*, which has not been translated by Mr. Colebrooke, have been unavoidably rendered by myself. I have, however, taken the precaution to cite the original Sanskrit, that the reader may satisfy himself of the accuracy of my translation.

ON
THE RIGHT OF HINDUS
OVER
ANCESTRAL PROPERTY.

INDIA, like other large empires, is divided into several extensive provinces, principally inhabited by Hindus and Mussulmans. The latter admit but a small degree of variety in their domestic and religious usages, while the Hindus of each province, particularly those of Bengal, are distinguished by peculiarities of dialect, habits, dress, and forms of worship; and notwithstanding they unanimously consider their ancient legislators as inspired writers, collectively revealing human duties, nevertheless there exist manifest discrepancies among them in the received precepts of civil law.

2. When we examine the language spoken in Bengal, we find it widely different from that of any part of the western provinces, (though both derived from the same origin); so that the inhabitants of the upper country require long residence to understand the dialect of Bengal; and although numbers of the natives of the upper provinces, residing in Bengal, in various occupations, have seemingly familiarized themselves to the Bengalees, yet the former are imperfectly understood, and distantly associated with by the latter. The language of Tel-lingana and other provinces of the Dukhun not being of Sanskrit origin, is still more strikingly different from the language of Bengal and the dialects of the upper provinces. The variety observable in their respective habits, and forms of dress and of worship, is by no means less striking than that of their respective languages, as must be sufficiently apparent in ordinary intercourse with these people.

3. As to the rules of civil law, similar differences have always existed. The *Dayabhaga*, a work by Jimutavahana, treating of inheritance, has been regarded by the natives of Bengal as of authority paramount to the rest of the digests of the sacred authorities: while the *Mitakshara*, by Vijnaneswara, is upheld, in like manner, throughout the upper provinces, and a great part of the Dukhun. The natives of Bengal and those of the upper provinces believe alike

in the sacred and authoritative character of the writings of Manu, and of the other legislating saints: but the former receive those precepts according to the interpretation given them by Jimutavahana, while the latter rely on the explanation of them by Vijnaneswara. The more modern author, Jimutavahana, has often found occasion to differ from the other in interpreting sacred passages according to his own views, most frequently supported by sound reasoning; and there have been thus created everlasting dissensions among their respective adherents, particularly with regard to the law of inheritance.*

4. An European reader will not be surprised at the differences I allude to, when he observes the discrepancies existing between the Greek, Armenian, Catholic, Protestant, and Baptist churches, who, though they all appeal to the same authority, materially differ from each other in many practical points, owing to the different interpretations given to passages of the Bible by the commentators they respectively follow.

5. For further elucidation I here quote a few remarks from the preface to the translation of the *Dayabhaga*, and of a part of the *Mitakshara*, by Mr. Colebrooke, well known in the literary world, which are as follows. "It (the present volume) comprehends the celebrated treatise of Jimutavahana on succession, which is constantly cited by the lawyers of *Bengal*, under the emphatic title of *Dayabhaga*, or 'inheritance'; and an extract from the still more celebrated *Mitakshara*, comprising so much of this work as relates to inheritance. The range of its authority and influence is far more extensive than that of Jimutavahana's treatise, for it is received in all the schools of Hindu law, from Benares to the Southern extremity of the peninsula of India, as the chief groundwork of the doctrines which they follow, and as an authority from which they rarely dissent." (p. 4.) "The Bengal school alone, having taken for its guide Jimutavahana's treatise, which is, on almost every disputed point, opposite in doctrine to the *Mitakshara*, has no deference for its authority." (p. 4.) "But (between the *Dayabhaga* and the abridgments of its doctrines) the preference appeared to be decidedly due to the treatise of Jimutavahana himself, as well because he was the founder of this school, being the author of the doctrine which it has adopted, as because the

* Of eighteen Treatises on various branches of Hindu Law, written by Jimutavahana, that on Inheritance alone is now generally to be met with.

subjects which he discusses, are treated by him with eminent ability and great precision." (p. 5.) The following is a saying current among the learned of Bengal, confirming the opinion offered by Mr. Colebrooke :

व्यवस्था द्विविधा प्रोक्ता दायभागमतामता ।

दायभागविद्वद्वा या मता न कुचसम्मता ॥

"Opinions are said to be of two kinds, one founded on the authority of the Dayabhaga and the other opposed to it; (but) what is opposed to the Dayabhaga is not approved of by the learned."

6. From a regard for the usages of the country, the practice of the British courts in Bengal, as far as relates to the law of inheritance, has been hitherto consistent with the principles laid down in the Dayabhaga, and judgments have accordingly been given on its authority in many most important cases, in which it differs materially from the Mitakshara. I notice a few important cases of frequent occurrence, which have been fully discussed and invariably decided by the judicial tribunals in Bengal, in conformity with the doctrines of Jimutavahana.

First. If a member of an undivided family dies, leaving no male issue, his widow shall not be entitled to her husband's share according to the Mitakshara : but according to the Dayabhaga, she shall inherit such undivided portion.*

Second. A childless widow, inheriting the property of her deceased husband, is authorized to dispose of it, according to the Mitakshara : but according to the Dayabhaga, she is not entitled to sell or give it away.†

* Mitakshara, Ch. II, Sec. i, Article 39. "Therefore it is a settled rule, that a wedded wife, being chaste, takes the whole estate of a man, who, being separated from his co-heirs, and not subsequently reunited with them, dies leaving no male issue."

Dayabhaga, Ch. XI, Sec. i, Art. 43. "But, on failure of heirs down to the son's grandson, the wife, being inferior in pretensions to sons and the rest, because she performs acts spiritually beneficial to her husband from the date of her widowhood, [and not, like them, from the moment of their birth,] succeeds to the estate in their default."

Ditto ditto, Art. 19. "Some reconcile the contradiction, by saying, that the preferable right of the brother supposes him either to be not separated or to be reunited; and the widow's right of succession is relative to the estate of one who was separated from his co-heirs, and not reunited with them. [Art. 20.] That is contrary to a passage of Vrihaspati."

† Mitakshara, Ch. II, Sec. xi, Art. 2. "That, which was given by the father, mother, by the husband, or by a brother; and that, which was presented [to the bride] by the maternal uncles and the rest [as paternal uncles, maternal aunts, &c.] at the time of the wedding, before the nuptial fire; and a gift on a second marriage, or gratuity on account of supercession, as will be subsequently explained, ('To a woman whose husband marries a second wife let him give an equal sum as a compensation for the supercession'.) And also property which she may have acquired by inheritance, purchase, partition, seizure, or finding, are denominated by Manu, and the rest, *woman's property*."

Dayabhaga, Ch. XI, Sec. i, Art. 56. "But the wife must only enjoy her husband's estate after his demise. She is not entitled to make a gift, mortgage, or sale of it."

Third. If a man dies, leaving one daughter having issue, and another without issue, the latter shall inherit the property* left by her father, according to the Mitakshara; while the former shall receive it, according to the Dayabhaga.

Fourth. If a man dies without issue or brothers, leaving a sister's son and a paternal uncle, the latter is entitled to the property, according to the Mitakshara; and the former, according to the Dayabhaga.†

Fifth. A man, having a share of undivided real property, is not authorized to make a sale or gift of it without the consent of the rest of his partners, according to the Mitakshara; but according to the Dayabhaga, he can dispose of it at his free will.‡

Sixth. A man in possession of ancestral real property, though not under any tenure limiting it to the successive generations of his family, is not authorized to dispose of it, by sale or gift, without the consent of his sons and grandsons, according to the Mitakshara;

* Mitakshara, Ch. II, Sec. ii., Art. 4. "If the competition be between an unprovided and an enriched daughter, the unprovided one inherits; but, on failure of such, the enriched one succeeds," &c. Ch. II, Sec. xi, Art. 13. "Unprovided are such as are destitute of wealth or without issue." Hence a provided or enriched one, is such as has riches or issue.

Dayabhaga, Ch. XI, Sec. ii, Art. 3. "Therefore, the doctrine should be respected, which Dikshita maintains, namely, that a daughter who is mother of male issue, or who is likely to become so, is competent to inherit, not one, who is a widow, or is barren, or fails in bearing male issue, or bearing none but daughters, or from some other cause."

† Mitakshara, Ch. II, Sec. v. (beginning with the phrase, "If there be not even brother's sons, &c.") Art. 4. "Here, on failure of the father's descendants [including father's son and grandsons], the heirs are successively the paternal grandmother, the paternal grandfather, the uncles and their sons."

Dayabhaga, Ch. XI, Sec. vi, Art. 8. "But, on failure of heirs of the father down to the great-grandson, it must be understood, that the succession devolves on the father's daughter's son [in preference to the uncle.]"

‡ Mitakshara, Ch. I, Sec. i, Art. 30. "The following passage, 'separated kinmen, as those who are separated, are equal in respect of immoveables, for one has not power over the whole to make a gift, sale or mortgage,' must be thus interpreted: among unseparated kinmen, the consent of all is indispensably requisite, because no one is fully empowered to make an alienation, since the estate is in common; but among separated kindred, the consent of all tends to the facility of the transaction, by obviating any future doubt, whether they be separate or united; it is not required on account of any want of sufficient power in the single owner, and a transaction is consequently valid even without the consent of separated kinmen."

Dayabhaga, Ch. II, Sec. xxvii. "For here also [in the very instance of land held in common] as in the case of other goods, there equally exists a property consisting in the power of disposal at pleasure."

while, according to the Dayabhaga, he has the power to alienate the property at his free will.*

7. Numerous precedents in the decisions of the civil courts in Bengal, and confirmations on appeal by the King in council, clearly show that the exposition of the law by the author of the Dayabhaga, as to the last mentioned point, so far from being regarded as a dead letter has been equally, as in other points, recognized and adopted by the judicial authorities both here and in England. The consequence has been, that in the transfer of immoveable property the natives of Bengal have hitherto firmly relied on those judicial decisions as confirming the ancient usages of the country, and that large sums of money have consequently been laid out in purchase of land without reference to any distinction between acquired and ancestral property.

8. Opinions have been advanced for some time past, in opposition to the rule laid down in the Dayabhaga, authorizing a father to make a sale or gift of ancestral property, without the consent of his sons and grandsons. But these adverse notions created little or no alarm; since, however individual opinions may run, the general principles followed by every Government are entirely at variance with the practice

* Mitakshara, Ch. I, Sec. i, Art. 27. "Therefore, it is a settled point, that property, in the paternal or ancestral estate, is, by birth, (although) the father have independent power in the disposal of effects other than immoveables, for indispensable acts of duty, and for purposes prescribed by text of law, as gift through affection, support of the family, relief from distress, and so forth; but he is subject to the control of his sons and the rest, in regard to the immoveable estate, whether acquired by himself or inherited from his father or other predecessor; since it is ordained, 'Though immoveables of bipeds have been acquired by a man himself, a gift or sale of them should not be made without convening all the sons. They who are born, and they who are yet unbegotten and they who are still in the womb, require the means of support: no gift or sale should therefore be made.'"

Ditto, Ch. I, Sec. v, Art. 10. "Consequently, the difference is this; although he have a right by birth in his father's and in his grandfather's property, still since, he is dependent on his father, in regard to the paternal estate, and since the father has a predominant interest, as it was acquired by himself, the son must acquiesce in the father's disposal of his own acquired property; but, since both have indiscriminately a right in the grandfather's estate, the son has a power of interdiction [if the father be dissipating the property.]"

Dayabhaga, Ch. II, Sec. xxviii. "But the texts of Vyasa, exhibiting a prohibition, are intended to show a moral offence, since the family is distressed by sale, gift, or other transfer, which argues a disposition in the person to make an ill use of his power as owner. They are not meant to invalidate the sale or other transfer." Ditto, Sec. xxvi, and Sec. xiv.

of groundlessly abrogating, by arbitrary decision, such civil laws of a conquered country as have been clearly and imperatively set forth in a most authoritative code, long adhered to by the natives, and repeatedly confirmed, for upwards of half a century, by the judicial officers of the conquerors. But the people are now struck with a mingled feeling of surprize and alarm, on being given to understand that the Supreme Law Authority in this country though not without dissent on the Bench, is resolved to introduce new maxims into the law of inheritance hitherto in force in the province of Bengal; and has, accordingly, in conformity with the doctrines found in the Mitakshara declared every disposition by a father of his ancestral real property, without the sanction of his sons and grandsons, to be null and void

9. We are at a loss now to reconcile the introduction of this arbitrary change in the law of inheritance with the principles of justice, with reason, or with regard for the future prosperity of the country:—it appears inconsistent with the principles of justice; because a judge, although he is obliged to consult his own understanding, in interpreting the law in many dubious cases submitted to his decision, yet is required to observe strict adherence to the established law, where its language is clear. In every country, rules determining the rights of succession to, and alienation of property, first originated either in the conventional choice of the people, or in the discretion of the highest authority, secular or spiritual; and those rules have been subsequently established by the common usages of the country, and confirmed by judicial proceedings. The principles of the law as it exists in Bengal having been for ages familiar to the people, and alienations of landed property by sale, gift, mortgage, or succession having been for centuries conducted in reliance on the legality and perpetuity of the system, a sudden change in the most essential part of those rules cannot but be severely felt by the community at large; and alienations being thus subjected to legal contests, the courts will be filled with suitors, and ruin must triumph over the welfare of a vast proportion of those who have their chief interest in landed property.

10. Mr. Colebrooke justly observes, in his Preface to the translation of the Dayabhaga, that "The rules of succession to property being in their nature arbitrary, are in all systems of law merely conventional. Admitting even that the succession of the offspring to the

parent is so obvious as almost to present a natural and universal law, yet this very first rule is so variously modified by the usages of different nations, that its application at least must be acknowledged to be rounded on consent rather than on reasoning. In the laws of one people the rights of primogeniture are established ; in those of another the equal succession of all the male offspring prevails ; while the rest allow the participation of the female with the male issue, some in equal, others in unequal proportions. Succession by right of representation, and the claim of descendants to inherit in the order of proximity, have been respectively established in various nations, according to the degree of favour with which they have viewed those opposite pretensions. Proceeding from lineal to collateral succession, the diversity of laws prevailing among different nations, is yet greater, and still more forcibly argues the arbitrariness of the rules." (page 1.)

11. We are at a loss how to reconcile this arbitrary change with reason ; because, any being capable of reasoning would not, I think, countenance the investiture, in one person, of the power of legislation with the office of judge. In every civilized country, rules and codes are found proceeding from one authority, and their execution left to another. Experience shews that unchecked power often leads the best men wrong, and produces general mischief.

12. We are unable to reconcile this arbitrary change with regard for the future prosperity of the country ; because the law now proposed, preventing a father from the disposal of ancestral property, without the consent of his son and grandson, would immediately, as I observed before, subject all past transfers of land to legal contest, and would at once render this large and fertile province a scene of confusion and misery. Besides, Bengal has been always remarkable for her riches, insomuch as to have been styled by her Muhammadan conquerors "Junnutoolbelad," or paradise of regions ; during the British occupation of India especially, she has been manifoldly prosperous. Any one possessed of landed property, whether self-acquired or ancestral, has been able, under the long established law of the land, to procure easily, on the credit of that property, loans of money to lay out on the improvement of his estate, in trade or in manufactures, whereby he enriches himself and his family and benefits the country. Were the change which it is threatened to introduce into the law of inheritance to be sanctioned, and the privilege of disposing of ancestral property (though not entailed) without the consent of

heirs be denied to landholders, they being incapacitated from a free disposal of the property in their actual possession, would naturally lose the credit they at present enjoy, and be compelled to confine their concerns to the extent of their actual savings from their income; the consequence would be, that a great majority of them would unavoidably curtail their respective establishments, much more their luxuries, a circumstance which would virtually impede the progress of foreign and domestic commerce. Is there any good policy in reducing the natives of Bengal to that degree of poverty which has fallen upon a great part of the upper provinces, owing, in some measure, to the wretched restrictions laid down in the Mitakshara, their standard law of inheritance? Do Britons experience any inconvenience or disadvantage owing to the differences of legal institutions between England and Scotland, or between one county of England and another? What would Englishmen say, were the Court of King's Bench to adopt the law of Scotland, as the foundation of their decisions regarding legitimacy, or of Kent, in questions of inheritance? Every liberal politician will, I think, coincide with me, when I say, that in proportion as a dependent kingdom approximates to her guardian country in manners, in statutes, in religion, and in social and domestic usages, their reciprocal relation flourishes, and their mutual affection increases.

13. It is said that the change proposed has forced itself on the notice of the Bench upon the following premises:—

1st. Certain writings, such as the institutes of Manu and others, esteemed as sacred by Hindus, are the foundation of their law of inheritance. 2ndly. That Jimutavahana, the author of the *Dayabhaga*, is but a commentator on those writings. 3rdly. That from these circumstances, such part of the commentary by Jimutavahana as gives validity to a sale or gift by a father of his ancestral immovables, without the consent of his son and grandson, being obviously at variance with sacred precepts found on the same subject, should be rejected, and all sales or gifts of the kind be annulled.

14. I agree in the first assertion, that certain writings received by Hindus as sacred, are the origin of the Hindu law of inheritance, but with this modification, that the writings supposed sacred are only, when consistent with sound reasoning, considered as imperative, as Manu plainly declares: "He *alone* comprehends the system of duties, religious and civil, who can reason, by rules of logic, agreeably

to the Veda, on the general heads of that system as revealed by the holy sages." Ch. xii, v. 106. Vrihaspati. "Let no one found conclusions on the mere words of Sastras : from investigations without reason, religious virtue is lost."* As to the second position, I first beg to ask, whether or not it be meant by Jimutavahana's being styled a *commentator* that he wrote commentaries upon all or any of those sacred institutes. The fact is, that no one of those sacred institutes bears his comment. Should it be meant that the author of the Dayabhaga was so far a commentator, that he culled passages from different sacred institutes, touching every particular subject, and examining their purport separately and collectively, and weighing the sense deducible from the context, has offered that opinion on the subject which appeared to agree best with the series of passages cited collectively, and that when he has found one passage apparently at variance with another, he has laid stress upon that which seemed the more reasonable and more conformable to the general tenor, giving the other an interpretation of a subordinate nature, I readily concur in giving him the title of a commentator, though the word expounder would be more applicable. By way of illustration, I give here an instance of what I have advanced, that the reader may readily determine the sense in which the author of the Dayabhaga should be considered as a commentator

15. In laying down rules "on succession to the estate of one who leaves no male issue," this author first quotes (Ch. xi, page 158) the following text of Vrihaspati: "In scripture and in the code of law, as well as in popular practice, a wife is declared by the wise to be half the body of her husband, equally sharing the fruit of pure and impure acts. Of him, whose wife is not deceased, half the body survives : how then should another take his property, while half his person is alive? Let the wife of a deceased man, who left no male issue, take his share notwithstanding kinsmen, a father, a mother, or uterine brother, be present," &c., &c. He next cites the text of Yajnavalkya, (p. 190) as follows :—"The wife and the daughters, also both parents, brothers likewise, and their sons, gentiles, cognates, a pupil, and a fellow student : on failure of the first among these, the next in order is indeed heir to the estate of one, who departed for

* केवलं शास्त्रमाश्रित्य न कर्तव्योऽर्थनिर्णयः ।

युक्तिहीनविचारेण धर्महाणिः प्रजायते ॥ बृहस्पतिः ॥

heaven leaving no male issue. This rule extends to all persons and classes." The author then quotes a text from the Institutes of Vishnu, ordaining that "the wealth of him who leaves no male issue, goes to his wife; on failure of her, it devolves on daughters; if there be none, it belongs to the mother," &c., &c. Having thus collected a series of passages from the Institutes of Vrihaspati, Yajnavalkya, and Vishnu, and examined and weighed the sense deducible from the context, the author offers his opinion on the subject. "By this text, [by the seven texts of Vrihaspati, and by the text of Yajnavalkya,] relating to the order of succession, the right of the widow, to succeed in the first instance, is declared." "Therefore, the widow's right must be affirmed to extend to the whole estate." (p. 161.)

16. The same author afterwards notices, in page 163, several texts of a seemingly contrary nature, but to which he does not hesitate to give a reconciling interpretation, without retracting or modifying his own decision. He quotes Sankha and Likhita, Paithinasi, and Yama, as declaring, "The wealth of a man who departs for heaven, leaving no male issue, goes to his brothers. If there be none, his father and mother take it; or his eldest wife, or a kinsman, a pupil, or a fellow student." Pursuing a train of long and able discussion, the author ventures to declare the subordinacy of the latter passage to the former, as the conclusion best supported by reason, and most conformable to the general tenor of the law. He begins saying, (p. 169,) "From the text of Vishnu and the rest, (Yajnavalkya and Vrihaspati,) it clearly appears, that the succession devolves on the widow, by failure of sons and other [male] descendants, and this is reasonable; for the estate of the deceased should go first to the son, grandson, and great grandson." He adds, in page 170, pointing out the ground on which the priority of a son's claim is founded, a ground which is applicable to the widow's case also, intimating the superiority of a widow's claim to that of a brother, a father, &c. "So Manu declares the right of inheritance to be founded on benefits conferred. 'By the eldest son, as soon as born, a man becomes the father of male issue, and is exonerated from debt to his ancestor; such a son, therefore, is entitled to take the heritage.'" The author next shews, that as the benefits conferred by a widow on her deceased husband, by observing a life of austerities, are inferior only to those procured to him by a son, grandson, and great grandson, her right to succession should be next to theirs in point of order.

(p. 173.) "But, on failure of heirs down to the son's grandson, the wife, being inferior in pretensions to sons and the rest, because she performs acts spiritually beneficial to her husband from the date of her widowhood, (and not, like them, from the moment of their birth,) succeeds to the estate in their default." He thus concludes: "Hence [since the wife's right of succession is founded on reason] the construction in the text of Sankha, &c., must be arranged by connexion of remote terms, in this manner: 'The wealth of a man, who departs for heaven, leaving no male issue, let his eldest [that is, his most excellent] wife take; or in her default, let the parents take it: on failure of them, it goes to the brothers.' The terms 'if there be none,' [that is, if there be no wife,] which occur in the middle of the text, are connected both with the preceding sentence 'it goes to his brothers,' and with the subsequent one, 'his father and mother take it.' For the text agrees with passages of Vishnu and Yajnavalkya, [which declare the wife's right,] and the reasonableness of this has been already shewn." (p. 174.)

17. It is, however, evident that the author of the Dayabhaga gives here an apparent preference to the authority of one party of the saints over that of the other, though both have equal claims upon his reverence. But admitting that a Hindu author, an expounder of their law, sin against some of the sacred writers, by withholding a blind submission to their authority, and likewise that the natives of the country have for ages adhered to the rules he has laid down, considering them reasonable, and calculated to promote their social interest, though seemingly at variance with some of the sacred authors; it is those holy personages alone that have a right to avenge themselves upon such expounder and his followers; but no individual of mere secular authority however high, can, I think, justly assume to himself the office of vindicating the sacred fathers, and punishing spiritual insubordination, by introducing into the existing law an overwhelming change in the attempt to restore obedience.

18. In this apparent heterodoxy, I may observe, Jimutavahana does not stand single. The author of the Mitakshara also has, in following, very properly, the established privilege of an expounder, reconciled, to reason, by a construction of his own, such sacred texts as appear to him, when taken literally, inconsistent with justice or good sense. Of this, numerous instances might easily be adduced

but the principle is so invariably adopted by this class of writers, that the following may suffice for examples. The author of the *Mitakshara* first quotes (Ch. I, Sec. iii, Arts 3 and 4, pp. 263—265) the three following texts of Manu, allotting the best portion of the heritage to the eldest brother at the time of partition. "The portion deducted for the eldest is the twentieth part of the heritage, with the best of all the chattels; for the middlemost half of that; for the youngest, a quarter of it." "If a deduction be thus made let equal shares of the residue be allotted; but if there be no deduction, the shares must be distributed in this manner; let the eldest have a double share, and the next born a share and a half, and the younger sons each a share: thus is the law settled."* The author of the *Mitakshara* then offers his opinion in direct opposition to Manu, saying, "The author himself† has sanctioned an unequal distribution when a division is made during the father's life time. 'Let him either dismiss the eldest with the best share, &c.'‡ Hence an unequal partition is admissible in every period. How then is a restriction introduced, requiring that sons should divide only equal shares? (Art. 4.) The question is thus answered: 'True, this unequal partition is found in the sacred ordinances; but it *must not be practised*, because it is abhorred by the world, [for] it secures not celestial bliss';§ as the practice [of offering bulls] is shunned, on account of popular prejudice, notwithstanding the injunction, 'Offer to a venerable priest a bull or a large goat'; and as the slaying of a cow is for the same reason disused, notwithstanding the precept, 'Slay a barren cow as a victim consecrated to Mitra and Varuna.' "|| By adverting to the above exposition of the law, we find that the objection of heterodoxy, if urged against the authority of the *Dayabhaga*, is equally applicable to that of the *Mitakshara* in its full extent, and may be thus established. 1st. Certain writings, such as the institutes of Manu and of others, esteemed sacred by Hindus, are the foundation of the law of inheritance. 2ndly. *Vijnaneswara* (author of the *Mitakshara*) is but a commentator on those writings. 3rdly. Therefore, such part of the commentatry of *Vijnaneswara*

* Manu, Ch. ix, v. 112, v. 116 and 117.

† *Yajnavalkya*.

‡ *Yajnavalkya*.

§ A passage of *Yajnavalkya*, according to the quotation of *Mitra Mishra* in *Viramitrodaya*, but ascribed to Manu in *Balambhatta's* commentary. It has not, however, been found either in Manu's or *Yajnavalkya's* Institutes.—(Mr. Colebrooke.)

|| Passage of the *Veda*.

as indiscriminately entitles all brothers to an equal share, being obviously at variance with the precepts of Manu found on the subject, should be rejected, and the best and the largest portion of the heritage be allotted to the eldest brother, by judicial authorities; according to the letter of the sacred text. Again, take the Mitakshara, Ch. I, Sec. 1, Art. 30, p. 257. "The following passage, 'Separated kinsmen, as those who are unseparated, are equal in respect of immoveables, for one has not power over the whole to make a gift, sale, or mortgage;' must be thus interpreted: 'Among unseparated kinsmen, the consent of all is indispensably requisite, because no one is fully empowered to make an alienation, since the estate is in common;' but among separated kindred, the consent of all tends to the facility of the transaction, by obviating any future doubt, whether they be separate or united: it is not required, on account of any want of sufficient power in the single owner, and the transaction is consequently valid even without the consent of separated kinsmen." Ditto, Ch. I, Sec. 11, Art 28, p. 316. "'The legitimate son is the sole heir of his father's estate; but, for the sake of innocence, he should give a maintenance to the rest.' This text of Manu must be considered as applicable to a case, where the adopted sons (namely, the son given and the rest) are disobedient to the legitimate son and devoid of good qualities."

19. I now proceed to the consideration of the last point, as the ground on which the change proposed is alleged to be founded. To judge of its validity we should ascertain whether the interpretations given by the author of the Dayabhaga, to the sacred texts, touching the subject of free disposal by a father of his ancestral property, are obviously at variance with those very texts, or if they are conformable to sound reason and the general purport of the passages cited collectively on the same subject. With this view I shall here repeat, methodically, the series of passages quoted by the author of the Dayabhaga, relating to the above point, as well as his interpretation and elucidation of the same.

20. To shew the independent and exclusive right of a father in the property he possesses, (of course with the exception of estates entailed) the author first quotes the following text of Manu. After the (death of the) father and the mother, the brethren, being assembled, must divide equally the paternal estate: *For they have not power over it, while their parents live.* Ch. I. Sec. 14 (p. 8). He

next quotes Devala: "When the father is deceased, let the sons divide the father's wealth; for *sons have not ownership while the father is alive* and free from defect." Ch. I, Sec. 18 (p. 9.) After a long train of discussion, the author appeals to the above texts as the foundation of the law he has expounded, by saying, "Hence the text of Manu, and the rest (as Devala) must be taken as shewing, that sons have not a right of ownership in the wealth of the living parents, but in the estates of both when deceased." Ch. I Sec. 30, (pp. 13 and 14.)

21. To illustrate the position that the father is the sole and independent owner of the property in his possession, whether self-acquired or ancestral, the author thus proceeds: "A division of it does not take place without the father's choice; since Manu, Narada, Gotama, Baudhayana, Sankha, and Likhita, and others (in the following passages, 'they have not power over it;' 'they have not ownership while their father is alive and free from defect;' 'while he lives if he desire partition;' 'partition of heritage by consent of the father;' 'partition of the estate being authorized while the father is living,' &c.) declare without restriction, that sons *have not a right to any part of the estate while the father is living*, and that *partition awaits his choice*: for these texts, declaratory of a *want of power* and *requiring the father's consent*, must relate also to property *ancestral*, since the same authors *have not separately propounded a distinct period for the division of an estate inherited from an ancestor*." Ch. II, Sec. 8 (p. 25). The circumstance of the partition of estates being entirely dependent on the will of the father, and the son's being precluded from demanding partition while the father is alive, sufficiently prove that they have not any right in the estate during his lifetime; or else the sons, as having property in the estate jointly with the father, would have been permitted to demand partition. Does not common sense abhor the system of a son's being empowered to demand a division between himself and his father of the hereditary estate? Would not the birth of a son with this power, be considered in the light of a curse rather than a blessing as subjecting a father to the danger of having his peaceable possession of the property inherited from his own father or other ancestor disturbed?

22. The author afterwards reasons on those passages that are of seemingly contrary authority; first quoting the text of Yajnavalkya as follows. "The ownership of father and son is the same in land

which was acquired by his father, or as a corrody, or in chattela." He adopts the explanation given to this text by the most learned, the ancient Udyota, affirming that it "properly signifies, as rightly explained by the learned Udyota, that, when one of two brothers, whose father is living, and who have not received allotments, dies leaving a son, and the other survives, and the father afterwards deceases, the text, declaratory of similar ownership, is intended to obviate the conclusion, that the surviving son alone obtains his estate, because he is next of kin. As the father has ownership in the grandfather's estate; so have his sons, if he be dead." Ch. II, Sec. 9, (25.) The author then points out, that such interpretation given to the text, as declares the claims of a grandson upon the estate of his grandfather equal to those of his father, while the father is living, is palpably objectionable; for, if sons had ownership during the life of their father, in their grandfather's estate, then should a division be made between two brothers, one of whom has male issue, and the other has none, the children of that one would participate, since (according to the opposite opinion) they have equally ownership." Ch. II, Sec. 11 (p. 26). He next quotes Vishnu: "When a father separates his sons from himself, his will regulates the division of his own acquired wealth. But in the estate inherited from the grandfather, the ownership of father and son is equal." Upon this text the author of the Dayabhaga justly remarks in the following terms. "This is very clear; when the father separates his sons from himself, he may, by his own choice, give them greater or less allotments, if the wealth were acquired by himself: but not so, if it were property inherited from the grandfather, because they have an equal right to it. The father has not in such case an unlimited discretion." Ch. II, Sec. 17 (p. 27). That is, a father dividing his property among his sons, to separate them from himself during lifetime, is not authorized to give them of his own caprice, greater or less allotments of his ancestral estate, as the phrase in the above text of Vishnu, "when a father separates his sons from himself," &c., prohibits the free disposal by a father of his ancestral property only on the occasion of allotments among his sons to allow them separate establishments. The author now conclusively states, that "Hence (since the text bears no meaning but in the sense above in respect of the that the mentio

between father and son in the case of property ancestral, and that it establishes the son's right to require partition, ought to be rejected," Ch. II, Sec. 18 (p. 27).

23. The author, thirdly, quotes Yajnavalkya. "The father is master of the gems, pearls and corals, and of all (other moveable, property), but neither the father, or the grandfather, is so of the *whole* immoveable estate;" and points out the sense conveyed by the term "the whole," found in the above passage, saying, "Since here also it is said the 'whole,' this prohibition forbids the gift or other alienation of the *whole*, because (immoveables and similar possessions are) means of supporting the family." (Ch. II, Sec. 23). That is, the father is likewise master of the ancestral estate, though not of the whole of it, implies that a father may freely dispose of a part of his ancestral estate, even without committing a moral offence. This passage of Yajnavalkya, cited by the opposite party, who deny to the father the power of free disposal of ancestral estates, runs, in a great measure, against them, since it disapproves a sale or gift by a father only of the whole of his ancestral landed property, while his sons are living, withholding their consent.

24. To justify the disposal by a father, under particular circumstances, even of the whole of his ancestral estate, without incurring a moral offence, the author adds, (Ch. II, Sec. 26.) "But if the family cannot be supported without selling the whole immoveable and other property, even the *whole* may be sold or otherwise disposed of as appears from the obvious sense of the passage, and because it is directed, that 'a man should *by all means* preserve himself;" and because a sacred writer positively enjoins the maintenance of one's family by all means possible, and prefers it to every other duty. "His aged mother and father, dutiful wife, and son under age, should be maintained even by committing a hundred unworthy acts.* Thus directed Manu." Vide Mitakshara, Ch. II. Manu positively says: "A mother, a father, a wife, and son, shall not be forsaken; he, who forsakes either of them, unless 'guilty of a deadly sin, shall pay six hundred panas as a fine to the King." (Ch. VIII, v. 389).

25. He, fourthly, quotes two extraordinary texts of Vyasa, as prohibiting the disposal, by a single parcener, of his share in the

* दृष्ट्वा मातापितरौ ब्राह्मणं माय्यां सुतः शिशुः ।

अप्यकार्ष्यशतं कृत्वा वर्तयित्वा बहुव्रतवीद ॥

immovables, under the notion that each parcener has his property in the whole estate jointly possessed. These texts are as follow: "A single parcener may not, without consent of the rest, make a sale or gift of the whole immovable estate, nor of what is common to the family." "Separated kinsmen, as those who are unseparated, are equal in respect of immovables: for one has not power over the whole, to give, mortgage, or sell it." Upon which the author of the *Dayabhaga* remarks, Ch. II. Sec. 27: "It should not be alleged that by the texts of Vyasa one person has not power to make a sale or other transfer of such property. For here also (in the very instance of land held in common) as in the case of other goods, there equally exists a property consisting in the power of disposal at pleasure." That is, a partner has, in common with the rest, an undisputed property existing either in the whole of the moveables, and immovables, or in an undivided portion of them; he, therefore, should not be, or cannot be, prevented from executing at his pleasure, a transfer of his right to another by a sale, gift, or mortgage of it.

26. In reply to the question, what might be the consequence of disregard to the prohibition conveyed by the above texts of Vyasa? the author says: "but the texts of Vyasa exhibiting a prohibition, are intended to shew a moral offence; since the family is distressed by a sale, gift or other transfer, which argues a disposition in the person to make an ill use of his power as owner. They are not meant to invalidate the sale or other transfer." (Ch. II, Sec. 28.) A partner is as completely a legal owner of his own share, (either divided or undivided) as a proprietor of an entire estate; and consequently a sale or gift executed by the former, of his own share, should, with reason, be considered equally valid, as a contract by the latter of his sole estate. Hence prohibition of such transfer being clearly opposed to common sense and ordinary usage, should be understood as only forbidding a dereliction of moral duty, committed by those who infringe it, and not as invalidating the transfer.

27. In adopting this mode of exposition of the law, the author of the *Dayabhaga* has pursued the course frequently inculcated by *Manu* and others; a few instances of which I beg to bring briefly to the consideration of the reader, for the full justification of this author. *Manu*, the first of all Hindu legislators, prohibits donation to an unworthy Brahman in the following terms—"Let no man, apprised of this law, present, even water to a priest, who acts like a cat, nor

to him who acts like a bittern, nor to him who is unlearned in the Veda." (Ch. IV, v. 192.) Let us suppose that in disregard to this prohibition a gift has been actually made to one of those priests; a question then naturally arises, whether this injunction of Manu's invalidates the gift, or whether such infringement of the law only renders the donor guilty of a moral offence. The same legislator, in continuation, thus answers; "Since property, though legally gained, if it be given to either of those three, becomes prejudicial in the next world both to the giver and receiver." (v. 193.) The same authority forbids marrying girls of certain descriptions, saying, "Let him not marry a girl with reddish hair, nor with any deformed limb, nor one troubled with habitual sickness, nor one either with no hair or with too much, nor one immoderately talkative; nor one with inflamed eyes." (Ch. III, v. 8.) Although this law has been very frequently disregarded, yet no voidance of such a marriage, where the ceremony has been actually and regularly performed, has ever taken place; it being understood that the above prohibition, not being supported by sound reason, only involves the bridegroom in the religious offence of disregard to a sacred precept. He again prohibits the acceptance of a gratuity, on giving a daughter in marriage naming every marriage of this description "*Asura*," as well as declaring an *Asura* marriage to be illegal; but daughters given in marriage on receiving a gratuity have been always considered as legal wives, though their fathers are regarded with contempt, as guilty of a deadly sin. The passages above alluded to are as follow: (Manu:) "But even a man of the servile class *ought not to receive a gratuity* when he gives his daughter in marriage; since a father, who takes a fee on that occasion, tacitly *sells* his daughter." (Ch. IX, v. 98.) "When the bridegroom, having given as much wealth as he can afford to the father and paternal kinsmen and to the damsel herself, takes her voluntarily as his bride; that marriage is named "*Asura*" (Ch. III, v. 31). "But in this code, three of the five last are held legal, and two illegal, the ceremonies of *Pisachas* and *Asuras* must never be performed." (Ch. III, v. 25.)

28. The author finally quotes the following text: "Though immoveables or bipeds have been acquired by a man himself, a gift or sale of them (*should*) not (*be made*) by him, unless convening all the sons"; and he proceeds affirming, "So likewise other text as this, must be interpreted in the same manner (as before). For the words

'should' and 'be made' must necessarily be understood." (Ch. II, Sec. 29.) That is, there is a verb wanting in the above phrase "a gift or a sale not by him," consequently, "should" or "ought" and "be made" are necessarily to be inserted, and the phrase is thus read: "A gift or sale *should* not be or *ought* not to be made by him," expressing a prohibition of the free disposal by a father even of his self-acquired immoveables. This text also, says the author, cannot be intended to imply the invalidity of a gift or sale by a lawful owner; but it shews a moral offence by breach of such a prohibition: "Since the family is distressed by a sale, gift, or other transfer, which argues a disposition in the person to make an ill use of his power as owner." Moreover, as Manu, Devala, Gotama, Baudhayana, Sankha, and Likhita, and others represent a son as having no right to the property in possession of the father, in the plainest terms, as already quoted in para. 21, no son should be permitted to interfere with the free disposal by the father of the property he actually possesses. The author now concludes the subject with this positive decision. "Therefore, since it is denied that a gift or sale should be made, the precept is infringed by making one. But the gift or transfer is not null: for a fact cannot be altered by a hundred texts." (Ch. II, Sec. 30.)

29. In illustration of this principle it may be observed, that a man legally possessed of immoveable property (whether ancestral or self-acquired) has always been held responsible and punishable as owner, for acts occurring on his estate, of a tendency hurtful to the peace of his neighbours or injurious to the community at large. He even forfeits his estate, if found guilty of treason or similar crimes, though his sons and grandsons are living who have not connived at his guilt. In case of default on his part in the discharge of revenue payable to Government from the estate, he is subjected to the privation of that property by public sale under the authority of Government. He is, in fact, under these and many other circumstances, actually and virtually acknowledged to be the lawful and perfect owner of his estate; a sale or gift by him of his property must therefore stand valid or unquestionable. Sacred writings although they prohibit such a sale or gift as may distress the family, by limiting their means of subsistence, cannot alter the fact, nor do they nullify what has been effectually done. I have already pointed out in the 37th paragraph the sense in which prohibitions of a similar nature should be taken, according to the authority of Manu,

which the reader is requested not to lose sight of. Mr. Colebrooke judiciously quotes (page 32) the observation made by Raghunandana (the celebrated modern expounder of law in Bengal) on the above passage of the Dayabhaga, ("A fact cannot be altered by a hundred texts,") which is as follows: "If a Brahman be slain, the precept 'Slay not a Brahman' does not annul the murder: nor does it render the killing of a Brahman impossible. What then? It declares the sin." Admitting for a moment that this sacred text (quoted in the Mitakshara also) be interpreted conformably to its apparent language and spirit, it would be equally opposed to the argument of our adversaries, who allow a father to be possessed of power over his self-acquired property; since the text absolutely denies to the father an independent power even over his self-acquired immoveables, declaring, "Though *immoveables* and bipeds have been *acquired by a man himself*," &c., &c. In what a strange situation is the father placed if such be really the law! How thoroughly all power over his own possessions is taken away, and his credit reduced!

30. The author quotes also two passages from Narada, as confirming the course of reasoning which he has pursued, with regard to the independence claimable by each of all the co-heirs in a joint property. The passages above alluded to are thus read: "When there are many persons sprung from one man, who have duties apart and transactions apart, and are separate in business and character, if they be not accordant in affairs, should they give or sell their own shares, they do all that as they please; *for they are masters of their own wealth.*" (Ch. II, Sec. 31.)

31. After I had sent my manuscript to the Press, my attention was directed to an article in the "*Calcutta Quarterly Magazine*, No. VI, April—June, 1825," being a Review of Sir F. W. McNaghten's Considerations on Hindu Law. In this essay I find an opinion offered by the writer tending to recommend that any disposal by a father of his ancestral immoveables should be nullified, on the principle that we ought "to *make that invalid, which was considered immoral.*" (p. 225.) I am surprised that this unqualified maxim should drop from the pen of the presumed reviewer, who, as a scholar, stands very high in my estimation, and from whose extensive knowledge more correct judgment might be expected. Let us, however, apply this principle to practice, to see how far, as a general rule, it may be safely adopted.

32. To marry an abandoned female, is an act of evil moral example : Are such unions to be therefore declared invalid, and the offspring of them rendered illegitimate ?

To permit the sale of intoxicating drugs and spirits, so injurious to health, and even sometimes destructive of life, on the payment of duties publicly levied, is an act highly irreligious and immoral : Is the taxation to be, therefore, rendered invalid and payments stopped ?

To divide spoils gained in a war commenced in ambition and carried on with cruelty, is an act immoral and irreligious : Is the partition therefore to be considered invalid, and the property to be replaced ?

To give a daughter in marriage to an unworthy man, on account of his rank or fortune, or other such consideration, is a deed of mean and immoral example : Is the union to be therefore considered invalid, and their children illegitimate ?

To destroy the life of a fellow-being in a duel, is not only immoral, but is reckoned by many as murder : Is not the practice tacitly admitted to be legal, by the manner in which it is overlooked in courts of justice ?

33. There are of course acts lying on the border of immorality, or both immoral and irreligious ; and these are consequently to be considered invalid : such as the contracting of debts by way of gambling, and the execution of a deed on the Sabbath day. The question then arises, how shall we draw a line of distinction between those immoral acts that should not be considered invalid, and those that should be regarded as null in the eye of the law ? In answer to this, we must refer to the common law and the established usages of every country, as furnishing the distinctions admitted between the one class and the other. The reference suggested is, I think, the sole guide upon such questions ; and pursuant to that maxim, I may be permitted to repeat, that according to the law and usages of Bengal, though a father may be charged with breach of religious duty, by a sale or gift of ancestral property at his own discretion, he should not be subjected to the pain of finding his act nullified ; nor the purchaser punished with forfeiture of his acquisition. However, when the author of the Review shall have succeeded in inducing British legislators to adopt his maxim, and declare that the validity of every act shall be determined by its consistence with morality, we may then listen to his suggestion, for applying the same rule to the Bengal Law of Inheritance.

34. The writer of this Review quotes (in p. 221) a passage from the *Dayabhaga*, (Ch. II, Sec. 76,) "Since the circumstance of the father being lord of all the wealth, is stated as a reason, and that cannot be in regard to the grandfather's estate, an unequal distribution, made by the father, is lawful only in the instance of his own acquired wealth." He then comments, saying, "Nothing can be more clear than Jimutavahana's assertion of this doctrine." But it would have been still more clear, if the writer had cited the latter part of the sentence obviously connected with the former; which is that, "Accordingly Vishnu says, 'When a father separates his sons from himself, his own will regulates the division of his own acquired wealth. But in the estate inherited from the grandfather, the ownership of father and son is equal.'" That is, a father is not absolute lord of his ancestral property, (as he is of his own acquired wealth,) *when occupied in separating his sons from himself* during his life. This is evident from the explanation given by the author of the *Dayabhaga* himself, of the above text of Vishnu, in Sec. 56, (Ch. II,) "The meaning of this passage is, 'In the case of his own acquired property, whatever he may choose to reserve, whether half or two shares, or three, all that is permitted to him by the law; but not so in the case of property ancestral;' as well as from the exposition by the same author of this very text of Vishnu, in sec. 17, (Ch. II,) already fully illustrated as applicable solely to the occasion of partition, (*vide* para. 22, p. 27.)

35. It would have been equally clear as desirable, because *conclusive*, if the writer of the article had also quoted the following passage of the *Dayabhaga* touching the same subject (Ch. II, Sec. 46). "By the reasoning thus set forth, if the elder brother have two shares of the father's estate, how should the highly venerable father being the natural parent of the brothers, and COMPETENT TO SELL, GIVE, OR ABANDON THE PROPERTY, and being the root of all connection with the *grandfather's estate*, be not entitled, in like circumstances, to a double portion of his own father's wealth?"

36. In expounding the following text of Yajnavalkya, "The father is master of the gems, pearls, and corals, and of all (other moveable property), but neither the father, nor the grandfather, is so of the whole immoveable estate"; the author of the *Dayabhaga* first observes, (Ch. II, Sec. 23,) "Since the grandfather is here mentioned, the text must relate to his effects." He then proceeds, saying,

Since here also it is said 'the whole,' the prohibition forbids the gift or other alienation of the 'whole,' &c. : and thus concludes the section (24): "For the insertion of the word 'whole' would be unmeaning (if the gift of even a small part were forbidden.)" The author of the *Dayabhaga* does not stop here ; but he lays down the following rule in the succeeding section already quoted, (26.) "But if the family cannot be supported without selling the *whole* *immovable* and other property, even the *whole* may be sold or other wise disposed of; as appears from the obvious sense of the passage, and because it is directed, that 'a man should by all means preserve himself.'" Here Jimutavahana justifies, in the plainest terms, the sale and other disposal by a father of the *whole* of the estate *inherited from his own father* for the maintenance of his family or for self-preservation, without committing even a moral offence : but I regret that this simple position by Jimutavahana should not have been adverted to by the writer of the article while reviewing the subject.

37. To his declaration, that "Nothing can be more clear than Jimutavahana's assertion of this doctrine," the reviewer adds the following phrase : "And the doubt cast upon its expounders, Raghunandana, Sri Krishna Tarkalankara and Jagannatha, is wholly gratuitous. In fact, the latter is chiefly to blame for the distinction between illegal and invalid acts." It is, I think, requisite that I should notice here who these three expounders were, whom the writer charges with the invention of this doctrine ; at what periods they lived ; and how they stood and still stand in the estimation of the people of Bengal. To satisfy any one on these points, I have only to refer to the accounts given of them by Mr. Colebrooke, in his preface to the translation of the *Dayabhaga*. In speaking of Raghunandana, he says, "It bears the name of Raghunandana, the author of the *Smriti-tatwa*, and the greatest authority on Hindu Law in the province of Bengal." "The *Daya-tatwa*, or so much of the *Smriti-tatwa* as relates to inheritance, is the undoubted composition of Raghunandana ; and in deference to the greatness of the author's name, and the estimation in which his works are held among the learned Hindus of Bengal, has been throughout diligently consulted and carefully compared with Jimutavahana's treatise, on which it is almost exclusively founded." (p. vii.) "Now Raghunandana's date is ascertained at about three hundred years from this time," &c. (p. xii.) Mr. Colebrooke thus introduces Sri Krishna

Tarkalankara : " The commentary of Sri Krishna Tarkalankara on the Dayabhaga of Jimutavahna, has been chiefly and preferably used. This is the most celebrated of the glosses on the text. Its authority has been long gaining ground in the schools of law throughout Bengal ; and it has almost banished from them the other expositions of the Dayabhaga ; being ranked in general estimation, next to the treatises of Jimutavahana and of Raghunandana." (p. vi.) " The commentary of Maheswara is posterior to those of Chudamani and Achyuta, both of which are cited in it ; and is probably anterior to Sri Krishna's or at least nearly of the same date." (p. vii.) In the note at foot he observes, " Great-grandsons of both these writers were living in 1806." Hence it may be inferred, that Sri Krishna Tarkalankara lived above a century from this time. Mr. Colebrooke takes brief notice of Jagannatha Tarkapanchanana, saying, " A very ample compilation on this subject is included in the Digest of Hindu Law, prepared by Jagannatha, under directions of Sir William Jones, &c." (p. ii.) The last mentioned, Jagannatha, was universally acknowledged to be the first literary character of his day, and his authority has nearly as much weight as that of Raghunandana.

38. Granting for a moment that the doctrine of free disposal by a father of his ancestral property is opposed to the authority of Jimutavahana, but that this doctrine has been prevalent in Bengal for upwards of three centuries, in consequence of the erroneous exposition of Raghunandana, "*the greatest authority of Hindu law in the province of Bengal,*" by Sri Krishna Tarkalankara, the author of "*the most celebrated of the glosses of the text,*" and by the most learned Jagannatha ; yet it would, I presume, be generally considered as a most rash and injurious, as well as ill-advised, innovation, for any administrator of Hindu Law of the present day to set himself up as the corrector of successive expositions, admitted to have been received and acted upon as authoritative for a period extending to upwards of three centuries back.

29. In the foregoing pages my endeavour has been to shew that the province of Bengal, having its own peculiar language, manners and ceremonies, has long enjoyed also a distinct system of law. That the author of this system has greatly improved on the expositions followed in other provinces of India, and, therefore, well merits the preference accorded to his exposition by the people of Bengal. That the discrepancies existing amongst the several interpretations of legal

texts are not confined alone to the law of disposition of property by a father, but extend to other matters. That in following those expositions which best reconcile law with reason, the author of the Bengal system is warranted by the highest sacred authority, as well as by the example of the most revered of his predecessors, the author of the Mitakshara ; and that he has been eminently successful in his attempt at so doing, more particularly by unfettering property, and declaring the principle, that the alienator of an hereditary estate is only morally responsible for his acts, so far as they are unnecessary, and tend to deprive his family of the means of support. That he is borne out in the distinction he has drawn between moral precepts, a disregard to which is sinful, leaving the act valid and legal, and absolute injunctions, the acts in violation of which are null and void. If I have succeeded in this attempt, it follows that any decision founded on a different interpretation of the law, however widely that exposition may have been adopted in other provinces, is not merely retrograding in the social institution of the Hindu community of Bengal, mischievous in disturbing the validity of existing titles to property, and of contracts founded on the received interpretation of the law, but a violation of the charter of justice, by which the administration of the existing law of the people in such matters was secured to the inhabitants of this country.

APPENDIX.

**LETTERS ON THE
HINDOO LAW OF INHERITANCE**

APPENDIX.

No. 1.

HINDOO LAW OF INHERITANCE.

Extract from a Letter published in the Bengal Hurkaru of the 20th September, 1830, relating to the power of a Father over Ancestral property.

To the Editor of the Bengal Hurkaru and Chronicle.

WILL you do me the favour of inserting the following lines in a corner of your valuable paper, as the insertion of them will be the means of dispersing the darkness which the author of the Essay on the Rights of Hindu Law, has thrown on the minds of those who believe the accuracy of the work in question, as well as of reviving the memory of your judicial readers on the subject of right and wrong, as expounded by the Hindu Legislators.

At the perusal of the observations contained in the Essay, I regret to say that I found almost all of them are repugnant to the laws and customs of the country and community, for which I would venture to discuss on those points, though I am perfectly aware, that he, (the learned author,) through his critical powers, is competent to set aside the true sense of the law, and to insert his own; but I hope your judicial readers will easily perceive the repugnancy in comparing them with Messrs. Colebrooke and Macnaghten's publications of the Hindu Law.

With regard to the father's power in alienating the ancestral landed property, which is treated of by the learned author, I will say nothing more at present, than that it is discussed by Mr. Macnaghten in his Principles and Precedents of the Hindu law: but I wish to know, Mr. Editor, does it follow from the doctrine of *Jimutavahana*, cited by the learned author, that a father has power to alienate the whole of the ancestral landed estate, or is it only applicable to the case when alienations are made? If the former be

asserted, how can the doctrines* of *Jimutavahana*, *Sricrishna Tarcalancara*, *Raghunandana*, *Jagannath Tarapanchanana*, and others, whose works are current in Bengal, be reconciled? But, on the other hand, if the latter supposition be proved to be correct, how can it be inferred, that, according to the *Dayabhaga*, the father has power to alienate the ancestral real property, as said by the learned author.

He, (the learned author,) exhibiting some ordinances regarding marriage, taxation, partition, and so forth, has made some hints on Sir F. W. Macnaghten's *Considerations*, of the Hindu Law, for his adverting that "*to make that invalid which was considered immoral.*" Mr. Editor, if according to the opinion of the learned author, it be considered as a general rule, that whatsoever alienations are made, they cannot be nullified, then should we not without hesitation say, that a sale without ownership, (that is, a sale by an individual who has no title to that which he has disposed of,) is not invalid? If it be argued that a father, according to the doctrines of *Jimutavahana*, has an independent power over ancestral real property, and can dispose of the whole of it at his free will, then what is to become of this doctrine: "What is bailed for delivery, what is lent for use, a pledge, joint property, a deposit, a son, a wife, and the whole estate of a man who has issue living." *Narada*. "The prohibition of giving away is declared to be eightfold: a man shall not give joint property, nor his son, nor his wife, *without their assent in extreme necessity*, nor a pledge, nor all his wealth, *if he have issue living*, &c." *Vishaspati*. "A wife or a son, or the whole of a man's estate, shall not be given away or sold without the assent of the persons interested; he must keep them himself." *Catyayana*?

In conclusion, I beg the favour of your judicious readers to see how far the Hindu Law allows a father to alienate the patrimonial immoveables, and what are alienable.

Your most obediently,

A HINDOO.

* "The prohibition is not against donation, or other transfer of a small part incompatible with the support of the family. But, if the family cannot be supported without selling the whole immoveable and other property, even the whole may be sold, or otherwise disposed of." "If there be no land or other permanent property, but only jewels or similar valuables, he is not authorised to expend the whole." "And as appears from the word 'whole' repeated in that text, the gift of all the precious stones, pearls, and the like, inherited from the grandfather, is not immoral, but a gift of the whole immoveable property is an offence."

No. II.

Reply to the above, published in the *Hurkaru* of the
24th September, 1880.

To the Editor of the Bengal Hurkaru and Chronicle.

SIR,

AN article in your journal of the 20th instant, under the signature of "A HINDOO," offering some remarks on an Essay lately published by me on Inheritance, having been brought to my notice, I beg to express the gratification it affords me to find that the subject excites the public attention due to its importance; for it is reasonable to hope that truth will be speedily elicited by fair and impartial enquiry, and the ruinous effects of error be consequently averted.

I have endeavoured to establish "the full control of Hindus over their ancestral property according to the law of Bengal." In support of this position, I ask permission to quote the unequivocal authority of Jimutavahana himself, the author of the *Dayabhaga*.

First. After citing the text of Manu in Ch. I., Sec. 14, the author offers his opinion (Sec. 15.) "The text is an answer to the question, why partition among sons is not authorised while their parents are living; namely, "because they have not ownership at that time." He denies them (Sec. 16,) even dependent right in the property in possession of the father. The author then reasons in Sec. 19—"Besides, if sons had property in their father's wealth, partition would be demandable even against his consent; and there is no proof, that property is vested by birth alone; nor is birth stated in the law as means of acquisition." He concludes the subject in Sec. 30, saying—"Hence the text of Manu and the rest (as Devala) must be taken as shewing, that sons have not a right of ownership in the wealth of the living parents, but in the estate of both when deceased."

The author of the *Dayabhaga* applies the same authorities, and the same reasoning to property, ancestral, in Ch. II., Sec. 8, quoting passages of Manu, Narada Gotama, Baudhayana, Sankha, and Likhita, &c., he affirms that these passages "declare without restriction, that sons have not a right to any part of the estate while the father is living, and that partition awaits his choice: For these texts declaratory of a want of power, and requiring the father's consent, must relate also to property ancestral; since the same authors have not separately propounded a distinct period for the division of an estate inherited from an ancestor."

Secondly. After thus establishing the exclusive and independent ownership of a father in the property self-acquired and ancestral, the author of the *Dayabhaga* defines, in the plainest language, what sort of power is attached to ownership. "For here also (in the very instance of land held in common) as in the case of other goods, there *equally exists a property consisting in the power of DISPOSAL AT PLEASURE.*" (Sec. 27.) Again: "By the reasoning thus set forth, if the elder brother have two shares of the father's estate, how should the highly venerable father, being the natural parent of the brothers, and competent to sell, give, or abandon the property, and being the root of all connexion with the *grand-father's estate* be not entitled, in like circumstances, to a double portion of his own father's wealth?" (Sec. 46.)

Thirdly. To reconcile the power of free disposal by a father of property, whether self-acquired,* ancestral or held in common, with such moral precepts as prohibit such a disposal, through consideration towards the rest of the family; the author of the *Dayabhaga* abhorring the idea of invalidating a sale or gift actually completed by a lawful and independent owner of his own property, proceeds, saying, "But the texts of *Vyasa*, exhibiting the prohibition, are intended to shew a moral offence; since the family is distressed by a sale or gift or other transfer, which argues a disposition in the person to make an ill use of his power as owner. *They are not meant to invalidate the sale or other transfer,*" (Sec. 28.†) He again repeats the same maxim with great explicitness in the succeeding Section, (30th,) conformably to the doctrines often inculcated by *Manu* himself, as noticed in my little Essay, (para. 28, pp. 34, 35.) "Therefore, since it is denied that a gift or sale should be made, the precept is infringed by making one. But the gift or transfer is *not null* for a fact cannot be altered by a hundred texts."

* "Though immoveables or bipeds have been acquired by a man himself, a gift or sale of them should not be made by him, unless convening all the sons." Cited in the *Dayabhaga*, Ch. II, Sec. 29, p. 32, "and the whole estate of a man who has issue living," should not be disposed of. *Narada*. "A man shall not give joint property," &c. &c. *Vrihaspati*.

† So scriptural precepts and prohibitions are sometimes received as morally and legally binding such as Matthew, Ch. V. v. 32, prohibiting divorcement of a wife without infidelity on her part; and v. 34, prohibiting oaths of all kinds, obeyed by Quakers, both morally and legally: but in some instances they are received as inculcating only moral duty, such as v. 42, "From him that would borrow of thee, turn not thou away;" and the very prohibition of oath is disregarded by Christians of other denominations, and their administration legally enforced, although some of the most eminent lawyers declare Christianity to be part and parcel of British Law.

For the reason stated by the author, in Section 28th, "since the family is distressed by a sale, gift, or other transfer," it is evident that a father or a partner subjects himself to a moral offence by the full disposal of all his property, provided his family be thereby involved in distress; but if the family consists of wealthy persons, and do not experience distress from such disposal, no moral offence can be charged to him; nor is he considered guilty of a breach even of moral duty, should he dispose of the whole property in his possession for the maintenance of the family or self-preservation, *ordained to be incumbent upon man*, as is obvious from the following quotation. "But if the family cannot be supported without selling the whole immoveable and other property, even the whole may be sold, or otherwise disposed of, as appears from the obvious sense of the passage, and because it is directed that 'a man should by all means preserve himself.' " (Sec. 26.)

Fourthly. In his interpretation of such passages as apparently limit the power of a father with regard to his ancestral property, the author of the *Dayabhaga* treats them as applicable *only in the instance of a father's separating his sons from himself during life, with allotments of the property, and not to any other occasion*; and thus he positively allows to the father the free disposal of his ancestral property on all other occasions. *Vide Dayabhaga, Ch. II, Secs. 15, 16, 19, &c. &c.*

As a calm enquiry into the merits of a literary question need not call forth the least unfriendly feeling amongst those who happen to espouse opposite views of the subject, it seems to me desirable that we divest ourselves of disguise, and be fairly known to the public by our real names. I beg therefore to subscribe myself,

Your most obedient servant,
RAMMOHUN ROY.

Sept. 23rd, 1830.

No. III.

*Extract from a Letter published in the Bengal Hurkaru of the
5th October, 1830, relating to the power of a Father over
Ancestral Property.*

THE learned author denied any limited power of the father over ancestral real property in his Essay, (page 11,) "a man in his possession of ancestral real property, though not under any tenure limiting it to the successive generations of his family, has the power to alienate the property at his free will;" but I am happy to find in his communication, that he, after some arguments partially admits it

in these words :—“ In his interpretation of such passage as apparently limit the power of a father with regard to his ancestral property, the author of the *Dayabhaga* treats them as applicable only in the instance of a father's separating his sons from himself during life with allotments of the property, and not to any other occasion ; and thus he positively allows to the father the free disposal of his ancestral property on all other occasions.” Hence I beg to enquire, is not the learned author's doctrine evident, that a father has not an unlimited power to make an unequal partition of the patrimonial landed estate with his sons ? If so, how should we admit, by parity of reason, that the author of the *Dayabhaga* “positively allows to the father free disposal of his ancestral property on all other occasions,” as declared by the learned author ? But we should rather reconcile the doctrine of the *Dayabhaga* (“they are not meant to invalidate the sale or other transfer”) by alleging that if a father infringe the law, and give or sell his patrimonial immoveables for religious purposes, the act cannot be nullified ; but if he disposes of it for civil affairs, the transfer is invalid.

Authorities :—“ Even the king should not, in breach of law, give immoveable property for civil purposes, but he may give land or the like for religious uses ; a gift of land without the assent of sons and the rest, is not consonant to duty, therefore arbitrators may think it has the appearance of a contract not made ; consequently it is an established rule, according to *Misra*, that a gift of his whole estate by a man, who has issue living, is invalid, without the assent of the persons interested. But this supposes gifts for civil, not for religious cases, since it is recorded in *Puranas* and other works, that *Harischandra* and others gave their whole property for religious purposes. Be it anyhow in regard to the whole of a man's estate acquired by himself ; but the gift of what has descended from an ancestor, by a man who has a son living, is void, because he has not independent power over that property ; for *Narada* declares null a gift made by one who is not an independent owner, and the law quoted by *Vachaspati*, *Bhattacharya*, and *Raghunandana*, declares a father not to be independent.” *Jagannatha Tarcapanchanana*.

But if it is argued, that in former times many kings have given their whole kingdoms to a son, assigning some alimony for their own male issue, and are not such gifts for civil purposes ? To this I humbly beg to reply, that a gift by a king for civil affairs is valid, provided he should not leave his family starving. Authorities :—*Smriti* : “ All subjects are dependent ; the king alone is free.” The last text is attributed to *Vyasa* by *Jimutavahana* and herein *Raghunandana* follows him. “ What except the food and clothing required

by the members of the family, who are entitled to maintenance, as above mentioned, may be given away, otherwise the family wanting food and clothing, in consequence of more being given, the donor's conduct is not virtuous." Jagannatha.

It becomes material to enquire, whether a man possessing his ancestral property, is competent to give away the whole of it by will in favour of a son, leaving other sons under maintenance, or is he under the control of his sons, and is the will null and void? Mr. Colebrooke observes, that "a last will and testament is unknown to the Hindu Law;" but it has been introduced in this country since the establishment of the British power, and we only admit its validity, wherein we see no discrepancies with the Hindu Law. The term "will" may, in some cases, be explained as the deed of partition, and in others as the deed of gift; but when the term signifies a deed of partition, we ought not to declare that it is valid, for the father has not an independent power to make an unequal partition of the patrimony, as is clearly proved by the learned author. If we define it as a deed of gift, then we must proceed to point out the law of the gift; the term "gift" means constituting the donee's property after annulling the previous right of the donor, and the English Law on the subject of the will and testament has a different interpretation. Therefore, "it appears" not "inconsistent with the principles of justice," for a judge to consult his own understanding, in a case of dubious point. Manu:—"Let him fully consider the nature of truth, the state of the case, and his own person; and next, the witnesses, the place, the mode, and the time, firmly adhering to all the rules of practice." Vrihaspati:—"A decision must not be made solely by having recourse to the letter of written codes; since, if no decision were made according to the reason of law, ('or according to immemorial usage; for the word *yucti* admits both senses,') there might be a failure of justice."

At all events it must be confessed, that the learned author has taken too much liberty with the Chief Justice to assert "that the supreme authority in this country is resolved to introduce new maxims into the Law of Inheritance, hitherto in force in the province of Bengal; and has accordingly, in conformity with the doctrines found in the Mitakshara declared every disposition by a father of his ancestral real property, without the sanction of his sons and grand-sons, to be null and void." By the late decision which the Chief Justice has passed in a case pending in the Supreme Court, and which has given rise to the Essay by the learned author, no new maxim has been introduced, and no custom of Bengal has been infringed.

In the concluding part of his communication, the learned author desires "that we should divest ourselves of disguise, and be fairly known to the public by our real names;" and with this view he subscribes his own name. I should have no objection to gratify this desire, had not I known that my name would be of no consequence to the public, and would add but little weight to the positions I have advanced. If, however, my assertions be correct, (and I leave them to be decided by your judicious readers), the end of my writing, which was to ascertain the truth of these important questions, is accomplished.

I am, Sir,

Your most obedient servant,

A HINDOO.

October 1st, 1830.

No. IV.

Reply to the above, published in the Hurkaru of the
13th October, 1830.

To the Editor of the Bengal Hurkaru and Chronicle.

SIR,

Another article on the Hindu Law of Inheritance, under the signature of "A HINDOO," having appeared in your Journal of the 5th Instant, I beg to offer a few remarks on the matters therein comprised.

Your learned correspondent has filled a large space with the illustration of his views as to the term "woman's property," a subject which is entirely foreign to the main point in question,* "the full control of Hindus over their ancestral property, according to the law of Bengal," and which may, therefore, be separately discussed, without distracting the attention of the reader, by mingling the one with the other: under this impression I deem it proper that these two different positions should be divided, and my present reply be confined to the subject at issue.

Your learned correspondent first states, that although in my Essay I ascribed to a father the power of free disposal of his ancestral property, yet in my reply, dated the 24th ultimo, I have partially admitted limitation by saying, that "in his interpretation of such passages as apparently limit the power of a father, with regard to his ancestral property, the author of Dayabhaga treats them as applicable only

* Therefore omitted as irrelevant, but afterwards answered separately.

in the instance of a father's separating his sons from himself. during life, with allotments of the property, and not to any other occasion." To rectify this misapprehension, I beg to refer the reader to my Essay para. 22, p. 29, where he will find a precisely corresponding statement in these terms : "As the phrase in the above text of Vishnu, 'when a father separates his sons from himself,' prohibits the free disposal, by a father, of his ancestral property, *only* on the occasion of allotments among his sons, to allow them separate establishment." Is it not evident that I have equally, in my Essay and in the Appendix, maintained the doctrine, that according to the Dayabhaga, a sale, gift, or other transfer by a father of his ancestral property, is legally valid ; and that while separating his sons from himself during life, a father should give them equal portions of the property derived from his ancestors ? So much for the charge of inconsistency.

In answer to the query advanced by your learned correspondent, "how should we admit, by parity of reason, that the author of the Dayabhaga positively allows to the father free disposal of his ancestral property on all other occasions," I beg to bring again to the recollection of the reader some of the passages of the Dayabhaga itself, Chap. II. Secs. 8, 27, and 46, (quoted by me in the Appendix, page 52, line 19,) manifestly permitting the free disposal by a father of his ancestral property.

Supported by the text of Vishnu, "when a father separates his sons, &c.," (Chap. II, Sec. 16,) the author of the Dayabhaga declares such sacred passages as seemingly limit the power of a father touching his ancestral estate, to be applicable only in the instance of a father's separating his sons from himself during life, and not to any other occasion ; and thus excepts from the general rule this instance only, saying "or the meaning of the text (cited in Sec. 9) may be, as set forth by Dhareswara, a father, *occupied in giving allotment at his pleasure*, has equal ownership with sons in the paternal grandfather's estate. He is not privileged to make an unequal *distribution* of it at his choice, as he is in regard to his own acquired property." (Chap. II, Sec. 15.) The author of the Dayabhaga proceeds still further, and applies the above limitation of the power of a father over his ancestral property only to such a father as is designated by the appellation of "*issue of the soil*" in the following language :—"The text before cited (Sec. 9) declaratory of the equal ownership of father and son, must be explained as intending a *father who was* (Kshetriya) *issue of the soil or wife*." That is, a son of two fathers, or begotten by appointment. Hence, according to the latter exception, the limitation of a father's power is applicable only to such a father as is called *issue of the soil*, now rarely to be found ; while, according to the former, the limitation

is applied only to the time of separation by a father of his sons from himself with allotments. This alternative decidedly proves, that in all other instances the Dayabhaga positively allows to the father the free disposal of his ancestral equally with his self-acquired property.

A sale or other transfer by the father, of the whole ancestral and self-acquired property, for the support of the family, for the performance of indispensable religious rites, as a part of domestic duty, or for self-preservation, is declared by the author of the Dayabhaga to be consistent with the sacred texts; hence, in such cases, he attaches no moral offence to the father for so doing, saying, "But if the family cannot be supported without selling the whole immoveable and other property, even the whole may be sold or otherwise disposed of; as appears from the obvious sense of the passage, (quoted in Ch. II, Sec. 22,) and because it is directed that a man should by all means preserve himself." But such sale or other transfer as occasions distress to the family and is consequently prohibited by the sacred texts inculcating moral duty, subjects the doer, according to the Dayabhaga, to the reproach of a moral offence, though the sale or transfer actually made by a lawful owner must stand void—"But the texts of Vyasa (cited in Sec. 27,) exhibiting a prohibition, are intended to shew a moral offence since the family is distressed by a sale, gift, or other transfer, which argues a disposition in the person to make an ill use of his power as owner. They are not meant to invalidate the sale or other transfer," (Sec. 28). Hence an attempt to reconcile the doctrine thus laid down in the Dayabhaga, with that recently proposed in opposition to the plainest language and the obvious purport of that work, is but an effort to upset the authority of the universally acknowledged law long prevailing throughout Bengal. As to the particulars of the precepts which should be considered as only morally binding, and those that are both legally and morally binding, I beg to refer the reader to my Essay, pages 29, 80, 31, par. 23, 24, 25, 26; and to the Appendix, No. II, note 2nd, page 53.

Under the head of "Authorities," (not specified,) your learned correspondent inserts the following passage: "*Even the king should not, in breach of law, give immoveable property for civil purposes,*" &c. In the succeeding paragraph he conditionally admits a gift by a king, even for civil purposes, saying, that "a gift by a king for civil affairs is valid, provided he should not leave his family starving." Your learned correspondent immediately afterwards quotes: "All subjects are dependent, the king alone is free," in opposition to both the preceding assertions. I trust your learned correspondent does not mean, by the above text, to establish that all subjects have a dependent right in their lawful possessions, and that the king is privileged

to take or give them away at his pleasure. While ascertaining the real doctrine of the author of the *Dayabhaga*, as to the power of a father over ancestral property, your learned correspondent does not quote a single passage from that author, but he quotes Misra, who is well-known to have opposed the author of the *Dayabhaga* in this and other points.

Your learned correspondent finally quotes Jagannatha on the subject at issue in these terms : " What exceeds food and clothing required by the members of the family who are entitled to maintenance, as above-mentioned, may be given away ; otherwise the family wanting food and clothing, in consequence of more being given, the donor's conduct is not virtuous." Pray, Mr. Editor, does not Jagannatha exactly follow the author of the *Dayabhaga*, by maintaining the doctrine, that if the family is distressed by a gift, the donation thus performed attaches *moral offence to the donor* ?

In the concluding part of his letter, your learned correspondent introduces the subject of a last Will or Testament. I hope I may be able to spare a few hours shortly for the consideration of this point : in the meantime,

I remain your most obedient servant,

RAMMOHUN ROY.

October 12, 1830.

No. V.

Continuation of the above Reply, published in the "Bengal Hurkaru" of the 21st October, 1830.

To the Editor of the Bengal Hurkaru and Chronicle.

SIR,

Your learned correspondent, "A HINDOO" introduces the subject of a last Will and Testament in his letter which appeared in your journal of the 5th instant, questioning the validity of such instruments, on the authority of the following language of Mr. Colebrooke : "A last Will and Testament is *unknown to the Hindu Law*, but it has been introduced in this country *since the establishment of the British power*, and we only admit its validity wherein we see no discrepancies with the Hindoo Law." I much regret that Mr. Colebrooke, an eminent scholar, and diligent student of Hindu Law, while offering the above opinion, should have overlooked the very first part of the gloss on the *Dayabhaga*, by Sri Krishna, which he "chiefly and preferably used," and which, in the preface to his translation of that work, (page 6,) he characterises as "the most celebrated of the

glosses on the text." "Its authority has been long gaining ground in the schools of law throughout Bengal, and it has almost banished from them the other expositions of the Dayabhaga, being ranked, in general estimation, next after the treatises of Jimutavahana and of Raghunandana." The passage I allude to is to be found in that celebrated gloss, expounding the purport of Sec. 38, Ch. I. of the Dayabhaga.

Nor does this learned gentleman seem to have recollected his own translation of the same passage, which runs in these words: "But when he, for the sake of obviating disputes among his sons, determines their respective allotments, continuing, however, the exercise of power over them, that is not partition, for his property still subsists, since there has been no relinquishment of it on his part. Therefore the use of the term partition, in such an instance, is lax and indeterminate." That is, in this instance the father *does not separate his sons from himself with allotments*; he only declares what certain portion of his property each son is to enjoy immediately after the extinction of his ownership by death, civil or natural; such previously determined division, therefore, cannot in reality be styled *partition* during the life of the father, which implies separation, and consequently does not fall within that only case in which his privileges over ancestral property are restricted.

To shew the priority of Sri Krishna's era to the British conquest of India, I beg to refer to the Preface to the translation of the Dayabhaga, by Mr. Colebrooke, (page 7, and the note therein contained,) giving an account of the probable periods at which Sri Krishna and some other commentators of the Dayabhaga lived. They shew clearly that Sri Krishna, whose authority is esteemed next to that of Jimutavahana, existed and died before the *establishment of British power* in India. How then, Mr. Editor, could Sri Krishna declare the *law* on the point, if the practice of a father's prescribing the manner of distributing his property after his ownership should be extinct, was unknown at his time?

So the celebrated Radhamohan Vidyavachaspati, while treating of previously determined partition by a father, quotes the following passage:—"With regard to debts, ploughing, stipulation, *previous partition* of property, and other translations, whatever was determined by a father becomes incumbent upon his sons after his demise." This system of pre-determination of allotments has been in most frequent use in Bengal from time immemorial; insomuch, that few fathers, possessed both of prudence and of property, have omitted a practice so effectually calculated to obviate future contentions in their family. Aged persons of respectability can still be found to certify this fact.

Besides, historical works in Sanscrit manifestly shew the frequency of this practice among eminent princes and celebrated characters, some soon, others long before their retirement or death. I may, perhaps, on a future occasion, have sufficient command of time to prepare a list of conspicuous instances; but, for the present, I beg to refer the reader to the Ramayana and the Maha Bharata, works commonly read, and highly revered by the Hindu community at large.

Your learned correspondent observes that I have taken too much liberty with the Chief Justice, and that I was not correctly informed as to the particulars of the decision passed in the case pending in the Supreme Court, which gave rise to the late Essay by me, a charge which, I beg to declare, is without foundation, since neither in the Essay nor in the Appendix, can any expression, I venture to affirm, be found that borders on disrespect towards his Lordship; and to vindicate the information I have been furnished with, I may be permitted to appeal to every Barrister of the Court, who had an opportunity of being acquainted with the opinions expressed, and which I have endeavoured to combat.

I fully concur with your learned correspondent in the assertion, that "a Judge may consult his own understanding in a case of dubious point." I, at the same time, trust your learned correspondent will condescendingly agree with me, when I repeat that "a Judge is required to observe strict adherence to the established law, where its language is clear," like that of the Dayabhaga.

I remain, Mr. Editor,

Your most obedient servant,

October 20th, 1830.

RAMMOHUN ROY.

Extract from a Letter published in the Bengal Hurkaru and in the Herald of 7th Nov. 1830, relating to the power of a father over Ancestral Property.

In his second communication the learned author, to establish his own doctrine, that a father, according to the Dayabhaga, has power to alienate the ancestral real property at his free will, referred the reader to the passages of the Dayabhaga, Chap. II, Secs. 8, 27, and 46, and those of his own Essay. The passages of the Dayabhaga, above referred to, do not manifestly admit the free disposal by a father of his ancestral property; for the first passage denotes only that the partition of ancestral property cannot take place while the father is living, without his consent and choice; the second does not disable a coparcener from alienating his own share of joint property; and the last enjoins that a father shall have two shares at a partition in his

lifetime. To prove this, I beg to refer your readers to the above passages themselves.

The learned author, in order to support his opinion, repeatedly quotes the passage of the *Dayabhaga*, Sec. 28, Chap. II. ("They are not meant to invalidate the sale or other transfer.") To refute this, I can at once say, that that passage does not enjoin, that a father has power to alienate his ancestral property, as declared by him, but it is meant to shew the validity of a sale, or like alienation by a coparcener of his own share, as is clearly evident from the following passages of *Sricrishna Tarcalancara*, the Commentator of the *Dayabhaga*.—"Since there is not a general property of the whole, a community of rights, consisting in there being numerous owners to the same thing, does not exist: and community signifies only the state of not being separated. But here it is the notion of the author of the *Dayabhaga*, who maintains a several right to a part vested in each person, that nothing prevents a donation or other transfer of the coparcener's own share, even before partition, since a common property is already vested in him." *Vide Dayabhaga*, page 32, Annotation 28.

The learned author, from a passage of *Sricrishna Tarcalancara*, commenting on Sec. 38. Chap. I. of the *Dayabhaga*, infers that the will is not foreign to the Hindu Law. To this, at present, I can only reiterate that it is unknown to the law in question, and the passage * itself confirms my observations, for it only exhibits the power of the father in determining the shares of his sons, and that determination is termed *Bhacta Vibhaga*, and it does not admit the father's unlimited power over ancestral real property.

As, however, the learned author observes, that a last will or testament is not foreign to the Hindu Law, I shall be greatly obliged by his shewing the corresponding Sanscrit term for *testament*, *testator*, *legacy*, *legatee*, and *executor*, in any of the Hindu Law works. When the learned author shall point out the above corresponding terms, I shall then endeavour to prove that his censures against those learned persons, the Honourable the Chief Justice and Mr. Colebrooke, are unjust, and void of reason. In the meantime, I beg to conclude, Mr. Editor, and remain,

Your obedient servant,

A HINDOO.

November 2, 1830.

* "But when the father, for the sake of obviating disputes among his sons, determines their respective allotments, continuing, however, the exercise of power over them, that is not partition; for his property still subsists, since there has been no relinquishment of it on his part. Therefore, the use of the term partition, in such an instance, is lax and indeterminate."

NO. VII.

Reply to the above, published in the Hurkaru of the 15th
November 1830.

To the Editor of the Bengal Hurkaru and Chronicle.

SIR,

Your learned correspondent, under the signature of "A HINDOO," has recurred to the subject of Inheritance, in his communication of the 2nd instant beginning by citing the passages of the Dayabhaga, (Chap. II, Secs. 8, 27, and 64,) quoted by me in my Appendix. He then proceeds to say, that "the passages of the Dayabhaga, above referred to, do not manifestly admit the free disposal by a father of his ancestral property; for the first passage denotes only that the partition of the ancestral property cannot take place while the father is living, without his consent and choice; the second does not disable a coparcener from alienating his own share of joint property, and the last enjoins that a father shall have two shares at a partition in his lifetime." I am, therefore, obliged to recite those passages severally and leave the reader to judge.

In the first passage, (Chap. II, Sec. 8,) the author of the Dayabhaga, after quoting the texts of Manu and others, affirms that these authors "declare, without restriction, that sons have not a right to any part of the estate while the father is living, and that partition awaits his choice; for these texts, declaratory of want of power, and requiring the father's consent, MUST RELATE ALSO TO PROPERTY ANCESTRAL, since the same authors have not separately propounded a distinct period for the division of an estate inherited from an ancestor." I would now ask if the sons, as appears clearly by this passage, have no right to any part of the father's property ancestral or acquired, has not the father the sole right in that property? And is not this something more than a mere declaration, that "partition of ancestral property cannot take place while the father is living, without his consent and choice," as affirmed by your learned correspondent? The author of the Mitakshara is of the contrary opinion, that sons have a right to the ancestral property, even while the father is living; and upon this ground he denies the father's power of disposal of ancestral property without the consent of his sons, saying, "In such property, which was acquired by the paternal grandfather, through acceptance of gifts, or by conquest or other means, [as commerce, agriculture, or service,] the ownership of father and son is notorious; and THEREFORE, partition does take place. For, or because the right is equal or alike; THEREFORE, partition is not restricted to be made by the father's choice; nor has he a double share." Mitakshara, Chap. I, Sec. 5, Art. 5.

The second passage quoted by me, and referred to by your learned correspondent, (Chap. II, Sec. 27,) is as follows : "For here also, [in the very instance of land held in common,] as in the case of other goods, there equally exists a *property consisting in the power of disposal at pleasure*." I beg to submit whether this passage does only declare the validity of the disposal of land, held in common by a parcener, as noticed by your learned correspondent ; or does it, as I contend, define ownership, with regard to land held in common, as equally with that in goods to consist in the power of disposal at pleasure ?

I now proceed to the 3rd passage alluded to by your learned correspondent, (Chap. II, Sec. 46.) which runs thus ; "By the reasoning thus set forth, if the elder brother have two shares of the father's estate, how should the highly venerable father, being the natural parent of the brothers, and *competent to sell*, give or abandon the property, and being the root of all connexion *with the grandfather's estate*, be not entitled, in like circumstances, to a double portion of his own father's wealth ?" I may here again safely appeal to the reader, whether this passage merely "enjoins, that a father shall have two shares at a partition in his lifetime," as alleged by your learned correspondent ; or whether it does not entitle a father to a double share of his ancestral property while separating his sons from himself, *on the ground that* he is possessed of the power "*to sell, give, or abandon the property*, and is the root of all connexion *with the grandfather's estate*?"

His next remarks apply to the Section 27, Chap. II, containing the following texts of Vyasa, ("A single parcener may not, without consent of the rest, make a sale or gift of the whole immoveable estate, nor of what is common to the family : "separated kinsmen, as those who are unseparated, are equal in respect of immoveables : for one has not power over the whole to give, mortgage, or sell it,") and also, to the Section 28th, quoted by me, ("But the texts of Vyasa, exhibiting a prohibition, are intended to shew a moral offence, since the family is distressed by a sale, gift, or other transfer, which argues a disposition in the person to make an ill use of his power as owner. They are not meant to invalidate the sale or other transfer.") With reference to these quotations, your learned correspondent observes, "I can at once say that that passage does not enjoin, that a father has power to alienate his ancestral property ; but it is meant to shew the validity of a sale or like alienation by a parcener of his own share."

I first beg to be permitted to bring to the notice of your learned correspondent the terms "kinsmen," "separated" or "unseparated," whom the latter texts of Vyasa, quoted above, prohibit from disposing of immoveables at their free will ; and then to ask, whether this text (equally with that preceding it, forbidding a parcener from disposing

of property held in common,) is not represented by the author of the *Dayabhaga* (in Sec. 28.) as "shewing a moral offence" in disregard to the prohibition, and "not meaning to invalidate the sale or other transfer?" The term "kinsmen" is well explained in Dr. Wilson's Dictionary, enumerating a father, grandfather, great-grand-father, &c. among kinsmen. Hence, a father, according to the *Dayabhaga*, may dispose of immoveables, subjecting himself, in certain cases, to the blame of moral offence, in like manner as a parcener may dispose of his undivided share. Your learned correspondent may now be pleased to say candidly, how far his conclusion, that the above passage (28) only shews "the validity of a sale or like alienation by a coparcener of his own share," is accurate?

As to the quotation from Sri Krishna, by your learned correspondent, it relates to the doctrine maintained by the author of the *Dayabhaga*, that a several right to a part is vested in each parcener, and that each has not property in the whole; and thus Sri Krishna justifies a sale or gift by a partner of his share, without at all limiting the power of a father over ancestral property.

I quoted in my last communication, a passage from the commentary of Sri Krishna, and another from that of the late Radhamohan, showing that the practice of making a will was known to the Hindu Law, without any attempt, on my part, to prove by inference from this separate and distinct subject of enquiry, a father's unrestricted power over ancestral property. --I may, therefore, be permitted to observe, that your learned correspondent might have dispensed with the assertion, that the passage "does not admit the father's unlimited power over ancestral property." It was not cited as so doing.

Your learned correspondent admits that the passage of Sri Krishna "exhibits the power of the father, in determining the shares of his sons, and that determination is termed '*Bhakta Vibhaga*,'" or partition in a loose sense; since the father still continues the exercise of power over those predetermined allotments. But he wishes me to point out the corresponding Sanskrit terms for testament, testator, &c., used in English, in connection with a last will. In reply, I beg to observe, that since the will is termed *Bhakta Vibhaga*, or partition, in a loose sense, the Sanskrit terms relating to the Will must bear the names compounded with "partition," such as "*Bhaga Lekha*" a will, "*Vibhakta*" a testator, "*Vibhakta*" legacy, "*Bhagi*" legatee, "*Niyogakrit*" executor, and so forth. all in a loose sense, but in common use. I remain in haste.

Your most obedient servant,

RAMMOHUN ROY,

November 13, 1830.

P. S.—You may, perhaps, hear from me again before quitting the River.

No. VIII.

Published in the Bengal Hurkaru of the 23rd Nov. 1830.

To the Editor of the Bengal Hurkaru and Chronicle.

SIR,

I DID, or rather could, not until yesterday, read with attention that part of a letter which appeared in your journal of the 5th ultimo, under the signature of "a Hindoo," which relates to the subject of "*Stridhan*," or woman's property. Your learned correspondent enquires "whether the publication of the Essay (by me) is intended only to shew the discrepancies betwixt the *Mitakshara* and *Dayabhaga*, or to point out the laws current in Bengal and Benares?" Your learned correspondent then adds, "If the former supposition be correct, I can recommend the learned author to say as he pleases; but, on the other hand, if the latter be just and proper, then I beg to refer to the doctrines of Balam Bhatta, Mitra Misra, Camalakara, and other Western writers and commentators." In reply to the query, I beg leave to state that the Essay in question was written expressly with a view to shew discrepancies between the doctrines maintained by the *Dayabhaga* and those inculcated in the *Mitakshara*, and for the satisfaction of your learned correspondent, I quote the language of the Essay on this very subject. "Judgments have accordingly been given on its (*Dayabhaga's*) authority, in many most important cases, in which it differs materially from the *Mitakshara*," (page 8, par. 6.) Now, your learned correspondent can have no objection to the assertion I made as to the differences existing between the *Dayabhaga* and the *Mitakshara*, with regard to "woman's property," as he has in one of the alternatives "recommended" me "to say" as "I please."

I fully agree with your learned correspondent as to the encroachments gradually made by the modern Hindu Law expounders, on the rights of females, laying stress upon shallow reasoning and unconnected passages a fact which I noticed in a pamphlet published by me in 1822, in these terms, "To compare the laws of female inheritance, which they (the ancients) enacted, and which afforded that sex the opportunity of the enjoyment of life, with that which moderns and our contemporaries have gradually introduced and established, to their complete privation, directly or indirectly, of most of those objects that render life agreeable."

I shall be most happy to make an attempt, on a future occasion, to illustrate this subject. In the meantime,

I remain, your very obedient servant,

RAMMOHUN ROY.

Kedgerce, Nov. 19, 1830.

PETITIONS
AGAINST THE
PRESS REGULATION

CALCUTTA

1823.

MEMORIAL TO THE SUPREME COURT.*

TO THE HONOURABLE SIR FRANCIS MAGNAGHTEN,

*Sole Acting Judge of the Supreme Court of
Judicature at Fort William in Bengal.*

MY LORD,

In consequence of the late Rule and Ordinance passed by His Excellency the Governor-General in Council, regarding the Publication of Periodical Works, your Memorialists consider themselves called upon with due submission, to represent to you their feelings and sentiments on the subject.

Your Memorialists beg leave, in the first place, to bring to the notice of your Lordship, various proofs given by the Natives of this country of their unshaken loyalty to, and unlimited confidence in the British Government of India, which may remove from your mind any apprehension of the Government being brought into hatred and

* "The eminently learned Dr. Bryce, the head minister of the new Scotch Church, having accepted the situation of Clerk of the Stationary belonging to the Honourable Company, Mr. Buckingham, the editor of the [*Calcutta*] *Journal* observed directly as well as indirectly that it was unbecoming of the character of the minister to accept a situation like this; upon which the Governor-General, in consideration of his disrespectful expression, passed an order that Mr. Buckingham should leave India for England within the period of two months from the date of the receipt of this order, and that after the expiration of that period he is not allowed to remain a single day in India."—*Mirat-al-Akhbar*.

"The *Journal* was suppressed, and at the close of 1823, Mr. Arnot, Mr. Buckingham's assistant editor, was arrested and put on board a home-going ship. The notice expelling Mr. Buckingham was followed up, suddenly and without notice, on March 14th, by a rigorous Press Ordinance from the Acting Governor-General in Council. * * *. The Ordinance prescribed that henceforth no one should publish a newspaper or other periodical without having obtained a license from the Governor-General in Council, signed by the Chief Secretary. Before this regulation could come into force, the law required it to be fixed up in the Supreme Court for twenty days, and then if not disallowed, registered. It was accordingly entered on March 15th. On the 17th, Council moved the Court to allow parties feeling themselves aggrieved by the new regulation to be heard. Sir Francis Macnaghten, the Sole Acting Judge, fixed the 31st for the hearing of objections, but suggested that in the meanwhile the objectors would do well to state their plea in a memorial to Government. Foremost among these objectors was Rammohun Roy. He and his friends set about promoting the suggested petition,..... Another memorial of the

contempt, or of the peace, harmony, and good order of society in this country, being liable to be interrupted and destroyed, as implied in the preamble of the above Rule and Ordinance.

First. Your Lordship is well aware, that the Natives of Calcutta and its vicinity, have voluntarily entrusted Government with millions of their wealth, without indicating the least suspicion of its stability and good faith, and reposing in the sanguine hope that their property being so secured, their interests will be as permanent as the British Power itself; while on the contrary, their fathers were invariably compelled to conceal their treasures in the bowels of the earth, in order to preserve them from the insatiable rapacity of their oppressive Rulers.

Secondly. Placing entire reliance on the promises made by the British Government at the time of the Perpetual Settlement of the landed property in this part of India, in 1793, the Landholders have since, by constantly improving their estates, been able to increase their produce, in general very considerably;* whereas, prior to that period; and under former Governments, their forefathers were obliged to lay waste the greater part of their estates, in order to make them appear of inferior value, that they might not excite the cupidity of Government, and thus cause their rents to be increased or themselves to be dispossessed of their lands,—a pernicious practice which often incapacitated the landholders from discharging even their stipulated revenue to Government, and reduced their families to poverty.

same tenour was hastily drawn up next day, signed by Rammohun and five other distinguished native gentlemen, and by-counsel submitted to the Supreme Court. This memorial was attributed by its opponents to an English Author, but was really, as was generally acknowledged later, the work of Rammohun. It may be regarded as the *Areopagitica* of Indian History. Alike in diction and in argument, it forms a noble landmark in the progress of English culture in the East. * * * * On this memorial being read, its prayer was supported by the speeches of Counsel, Mr. Fergusson and Mr. Turton. But Sir Francis Macnaghten gave his decision in favour of the Press Ordinance. * * * There was but one resource left to the defenders of a free Press, and of that resource Rammohun did not hesitate to avail himself. He and his co-adjutors appealed to the King in Council. The Appeal is one of the noblest pieces of English to which Rammohun put his hand. Its stately periods and not less stately thought recall the eloquence of the great orators of a century ago. In a language and style for ever associated with the glorious vindication of liberty, it invokes against the arbitrary exercise of British power the principles and traditions which are distinctive of British history."—*The Life and Letters of Raja Rammohun Roy* by Miss Collet.

* Generally, it is said, two or three fold—REPORTER.

Thirdly. During the last wars which the British Government were obliged to undertake against neighbouring Powers, it is well known, that the great body of Natives of wealth and respectability, as well as the Landholders of consequence, offered up regular prayers to the objects of their worship for the success of the British arms from a deep conviction that under the sway of that nation, their improvement, both mental and social, would be promoted, and their lives, religion, and property be secured. Actuated by such feelings, even in those critical times, which are the best test of the loyalty of the subject, they voluntarily came forward with a large portion of their property to enable the British Government to carry into effect the measures necessary for its own defence, considering the cause of the British as their own, and firmly believing that on its success, their own happiness and prosperity depended.

Fourthly. It is manifest as the light of day, that the general subjects of observation and the constant and the familiar topic of discourse among the Hindu community of Bengal, are the literary and political improvements which are continually going on in the state of the country under the present system of Government, and a comparison between their present auspicious prospects and their hopeless condition under their former Rulers.

Under these circumstances, your Lordship cannot fail to be impressed with a full conviction, that whoever charges the Natives of this country with disloyalty, or insinuates aught to the prejudice of their fidelity and attachment to the British Government, must either be totally ignorant of the affairs of this country and the feelings and sentiments of its inhabitants, as above stated, or, on the contrary, be desirous of misrepresenting the people and misleading the Government, both here and in England, for unworthy purposes of his own.

Your Memorialists must confess, that these feelings of loyalty and attachment, of which the most unequivocal proofs stand on record, have been produced by the wisdom and liberality displayed by the British Government in the means adopted for the gradual improvement of their social and domestic condition, by the establishment of Colleges, Schools, and other beneficial institutions in this city, among which the creation of a British Court of Judicature for the more effectual administration of Justice, deserves to be gratefully remembered.

A proof of the Natives of India being more and more attached to the British Rule in proportion as they experience from it the blessings of just and liberal treatment, is, that the Inhabitants of Calcutta, who enjoy in many respects very superior privileges to those of their fellow-subjects in other parts of the country, are known to be in like measure more warmly devoted to the existing Government ; nor is it at all wonderful they should in loyalty be not at all inferior to British-born Subjects, since they feel assured of the possession of the same civil and religious liberty, which is enjoyed in England, without being subjected to such heavy taxation as presses upon the people there.

Hence the population of Calcutta, as well as the value of land in this City, have rapidly increased of late years, notwithstanding the high rents of houses and the dearness of all the necessaries of life compared with other parts of the country, as well as the Inhabitants being subjected to additional taxes, and also liable to the heavy costs necessarily incurred in case of suits before the Supreme Court.

Your Lordship may have learned from the works of the Christian Missionaries, and also from other sources, that ever since the art of printing has become generally known among the Natives of Calcutta, numerous Publications have been circulated in the Bengalee Language, which by introducing free discussion among the Natives and inducing them to reflect and inquire after knowledge, have already served greatly to improve their minds and ameliorate their condition. This desirable object has been chiefly promoted by the establishment of four Native Newspapers, two in the Bengalee and two in the Persian Language, published for the purpose of communicating to those residing in the interior of the country, accounts of whatever occurs worthy of notice at the Presidency or in the country, and also the interesting and valuable intelligence of what is passing in England and in other parts of the world, conveyed through the English Newspapers or other channels.

Your Memorialists are unable to discover any disturbance of the peace, harmony, and good order of society, that has arisen from the English Press, the influence of which must necessarily be confined to that part of the community who understand the language thoroughly ; but they are quite confident, that the publications in the Native Languages, whether in the shape of a Newspaper

or any other work, have none of them been calculated to bring the Government of the country into hatred and contempt, and that they have not proved, as far as can be ascertained by the strictest inquiry, in the slightest degree injurious ; which has very lately been acknowledged in one of the most respectable English Missionary works. So far from obtruding upon Government groundless representations, Native Authors and Editors have always restrained themselves from publishing even such facts respecting the judicial proceedings in the Interior of the country as they thought were likely at first view to be obnoxious to Government.

While your Memorialists were indulging the hope that Government, from a conviction of the manifold advantages of being put in possession of full and impartial information regarding what is passing in all parts of the Country, would encourage the establishment of Newspapers in the cities and districts under the special patronage and protection of Government, that they might furnish the Supreme Authorities in Calcutta with an accurate account of local occurrences and reports of Judicial proceedings,—they have the misfortune to observe, that on the contrary, his Excellency the Governor-General in Council has lately promulgated a Rule and Ordinance imposing severe restraints on the Press and prohibiting all Periodical Publications even at the Presidency and in the Native Languages, unless sanctioned by a License from Government which is to be revocable at pleasure whenever it shall appear to Government that a publication has contained anything of an unsuitable character.

Those Natives who are in more favourable circumstances and of respectable character, have such an invincible prejudice against making a voluntary affidavit, or undergoing the solemnities of an oath, that they will never think of establishing a publication which can only be supported by a series of oaths and affidavits, abhorrent to their feelings and derogatory to their reputation amongst their countrymen.

After this Rule and Ordinance shall have been carried into execution, your Memorialists are therefore extremely sorry to observe, that a complete stop will be put to the diffusion of knowledge and the consequent mental improvement now going on, either by translations into the popular dialect of this country from the learned languages of the East, or by the circulation of literary intelligence drawn from foreign publications. And the same cause will also prevent those

Natives who are better versed in the laws and customs of the British Nation, from communicating to their fellow-subjects a knowledge of the admirable system of Government established by the British, and the peculiar excellencies of the means they have adopted for the strict and impartial administration of justice. Another evil of equal importance in the eyes of a just Ruler, is, that it will also preclude the Natives from making the Government readily acquainted with the errors and injustice that may be committed by its executive officers in the various parts of this extensive country; and it will also preclude the Natives from communicating frankly and honestly to their Gracious Sovereign in England and his Council, the real condition of his Majesty's faithful subjects in this distant part of his dominions and the treatment they experience from the local Government: since such information cannot in future be conveyed to England, as it has heretofore been, either by the translations from the Native publications inserted in the English Newspapers printed here and sent to Europe, or by the English publications which the Natives themselves had in contemplation to establish, before this Rule and Ordinance was proposed.

After this sudden deprivation of one of the most precious of their rights, which has been freely allowed them since the Establishment of the British Power, a right which they are not, and cannot be charged with having ever abused, the inhabitants of Calcutta would be no longer justified in boasting, that they are fortunately placed by Providence under the protection of the whole British Nation, or that the King of England and his Lords and Commons are their Legislators, and that they are secured in the enjoyment of the same civil and religious privileges that every Briton is entitled to in England.

Your Memorialists are persuaded that the British Government is not disposed to adopt the political maxim so often acted upon by Asiatic Princes, that the more a people are kept in darkness, their Rulers will derive the greater advantages from them; since, by reference to History, it is found that this was but a short-sighted policy which did not ultimately answer the purpose of its authors. On the contrary, it rather proved disadvantageous to them; for we find that as often as an ignorant people, when an opportunity offered, have revolted against their Rulers, all sorts of barbarous excesses and cruelties have been the consequence; whereas a people naturally disposed to peace and ease, when placed under a good Government

from which they experience just and liberal treatment, must become the more attached to it, in proportion as they become enlightened and the great body of the people are taught to appreciate the value of the blessings they enjoy under its Rule.

Every good Ruler, who is convinced of the imperfection of human nature, and reverences the Eternal Governor of the world, must be conscious of the great liability to error in managing the affairs of a vast empire and therefore he will be anxious to afford every individual the readiest means of bringing to his notice whatever may require his interference. To secure this important object, the unrestrained Liberty of Publication, is the only effectual means that can be employed. And should it ever be abused, the established Law of the Land is very properly armed with sufficient powers to punish those who may be found guilty of misrepresenting the conduct or character of Government, which are effectually guarded by the same Laws to which individuals must look for protection of their reputation and good name.

Your memorialists conclude by humbly entreating your Lordship to take this Memorial into your gracious consideration; and that you will be pleased by not registering the above Rule and Ordinance, to permit the Natives of this country to continue in possession of the civil rights and privileges which they and their fathers have so long enjoyed under the auspices of the British nation, whose kindness and confidence, they are not aware of having done anything, to forfeit.

CHUNDER COOMAR TAGORE,
DWARKA NAUTH TAGORE,
RAMMOHUN ROY,
HURCHUNDER GHOSE,
GOWREE CHURN BONNERGEE,
PROSSUNNO COOMAR TAGORE.

APPEAL TO THE KING IN COUNCIL.

TO THE KING'S MOST EXCELLENT MAJESTY.

MAY IT PLEASE YOUR MAJESTY.

We, your Majesty's faithful subjects, Natives of India and inhabitants of Calcutta, being placed by Providence under the sovereign care and protection of the august head of the British nation, look up to your Majesty as the guardian of our lives, property, and religion, and when our rights are invaded and our prayers disregarded by the subordinate authorities, we beg leave to carry our complaints before your Majesty's throne, which is happily established in mercy and justice, amidst a generous people celebrated throughout the earth as the enemies of tyranny, and distinguished under your royal auspices, as the successful defenders of Europe from Continental usurpation.

2nd. We, your Majesty's faithful subjects, now come before you under the most painful circumstances, the local executive authorities having suddenly assumed the power of legislation in matters of the highest moment, and abolished legal privileges of long standing, without the least pretence that we have ever abused them, and made an invasion on our civil rights such as is unprecedented in the History of British Rule in Bengal, by a measure which either indicates a total disregard of the civil rights and privileges of your Majesty's faithful subjects, or an intention to encourage a cruel and unfounded suspicion of our attachment to the existing Government.

3rd. The greater part of Hindustan having been for several centuries subject to Mahammadan Rule, the civil and religious rights of its original inhabitants were constantly trampled upon, and from the habitual oppression of the conquerors, a great body of their subjects in the southern Peninsula (Dukhin), afterwards called Marhattas, and another body in the western parts now styled Sikhs, were at last driven to revolt; and when the Mussulman power became feeble, they ultimately succeeded in establishing their independence; but the Natives of Bengal wanting vigor of body, and adverse to active exertion, remained during the whole period of the Muhammadan

conquest, faithful to the existing Government, although their property was often plundered, their religion insulted, and their blood wantonly shed. Divine Providence at last, in its abundant mercy, stirred up the English nation to break the yoke of those tyrants, and to receive the oppressed Natives of Bengal under its protection. Having made Calcutta the capital of their dominions, the English distinguished this city by such peculiar marks of favour, as a free people would be expected to bestow, in establishing an English Court of Judicature, and granting to all within its jurisdiction, the same civil rights as every Briton enjoys in his native country; thus putting the Natives of India in possession of such privileges as their forefathers never expected to attain, even under Hindu Rulers. Considering these things and bearing in mind also the solicitude for the welfare of this country, uniformly expressed by the Honourable East India Company, under whose immediate control we are placed, and also by the Supreme Councils of the British nation, your dutiful subjects consequently have not viewed the English as a body of conquerors, but rather as deliverers, and look up to your Majesty not only as a Ruler, but also as a father and protector.

4th. Since the establishment of the Supreme Court of Judicature in Calcutta till the present time, a period that has been distinguished by every variety of circumstances, the country sometimes reposing in the bosom of profound peace, at others shaken with the din of arms—the local Government of Bengal, although composed from time to time, of men of every shade of character and opinion, never attempted of its own will and pleasure to take away any of the rights which your Majesty's royal ancestors with the consent of their Councils had been graciously pleased to confer on your faithful subjects. Under the cheering influence of equitable and indulgent treatment and stimulated by the example of a people famed for their wisdom and liberality, the Natives of India, with the means of amelioration set before them, have been gradually advancing in social and intellectual improvement. In their conduct and in their writings, whether periodical or otherwise, they have never failed to manifest all becoming respect to a Government fraught with such blessings; of which their own publications and the judgment passed upon them by the works of their contemporaries, are the best proofs. Your faithful subjects beg leave in support of this statement to submit two extracts from English works very lately published, one by a Native of

India, and the other by English Missionaries; the first is from a work published on the 30th of January last, by Rammohun Roy, entitled "a Final Appeal to the Christian Public," which may serve as a specimen of the sentiments expressed by the Natives of India towards the Government.

"I now conclude my Essay in offering up thanks to the Supreme Disposer of the universe, for having unexpectedly delivered this country, from the long continued tyranny of its former Rulers, and placed it under the Government of the English, a nation who not only are blessed with the enjoyment of civil and political liberty, but also interest themselves, in promoting liberty and social happiness, as well as free inquiry into literary and religious subjects, among those nations to which their influence extends."—Pages 378, 379.

5th The second extract is from a periodical work published at the Danish settlement of Serampore, by a body of English Missionaries, who are known to be generally the best qualified and the most careful observers of the foreign countries in which Europeans have settled. This work, entitled the "FRIEND OF INDIA," treating of the Native Newspapers published in Bengal, thus observes: "How necessary a step this (the establishment of a Native Press) was for the amelioration of the condition of the Natives, no person can be ignorant who has traced the effects of the Press in other countries. The Natives themselves soon availed themselves of this privilege; no less than four Weekly Newspapers in the Native language have now been established, and there are hopes, that these efforts will contribute essentially to arouse the Native mind from its long lethargy of death; and while it excites them to inquire into what is going forward in a world, of which Asia forms so important a portion, urge them to ascertain their own situation respecting that eternal world, which really communicates all the vigour and interest now so visible in Europeans. *Nor has this liberty been abused by them in the least degree*; yet these vehicles of intelligence have begun to be called for, from the very extremities of British India, and the talents of the Natives themselves, have not unfrequently been exerted in the production of Essays, that would have done credit to our own countrymen."—(*Friend of India*, quarterly series, No. VII, published in December, 1822).

6th. An English gentleman, of the name of Buckingham, who for some years published a Newspaper in this place, entitled the "CALCUTTA JOURNAL," having incurred the displeasure of the local

Government, was ordered to leave this country, and soon afterwards, the Hon'ble John Adam, the Governor-General in Council, suddenly without any previous intimation of his intentions, passed a Rule and Ordinance, on the 14th of March, thus taking away the liberty of the Press, which your Majesty's faithful subjects had so long and so happily enjoyed, and substituting his own will and pleasure for the Laws of England, by which it had hitherto been governed. (This Rule, Ordinance, and Regulation is annexed: *vide* Paper annexed No. 1.)*

7th. It being necessary according to the system established for the Government of this country that the above Regulation should receive the approbation of the Supreme Court by being registered there, after having been fixed up for 20 days on the walls of the Court-room, before it could become Law on the following Monday, (the 17th of March,) Mr. Fergusson, Barrister, moved the Court to allow parties who might feel themselves aggrieved by the New Regulation, to be heard against it by their Counsel before the sanction of the Court should establish it as Law. and the Honourable Sir Francis Macnaghten, the sole acting Judge, expressed his willingness to hear in this manner, all that could be urged against it, and appointed Monday the 31st of the same month of March, for Counsel to be heard. His Lordship also kindly suggested, that in the meantime, he thought it would be advisable to present a Memorial to Government, praying for the withdrawal of the said Rule and Ordinance. These observations from the Honourable Sir Francis Macnaghten, inspired your Majesty's faithful subjects at this Presidency, with a confident hope, that his Lordship disapproved of the Rule and Ordinance, and would use his influence with Government to second the prayer of the Memorial he recommended to be presented, or that at least in virtue of the authority vested in him for the purpose of protecting your faithful subjects against illegal and oppressive acts, he would prevent the proposed Rule from passing into Law.

8th. Your faithful subjects agreeable to a suggestion of this nature, proceeding from such a source, employed the few days intervening, in preparing a Memorial to Government containing a respectful representation of the reasons which existed against the proposed Rule and Ordinance being passed into Law; but in prepar-

* These annexed papers have not been published as unnecessary.—Ed.

ing this Memorial in both the English and Bengalee Languages, and discussing the alterations suggested by the different individuals who wished to give it their support and signature, so much time was necessarily consumed, that it was not ready to be sent into circulation for signature until the 30th of March; consequently only fifteen Natives of respectability had time to read it over and affix their signature before the following day on which it was to be discussed in the Supreme Court and finally sanctioned or rejected. Besides that this number was considered insufficient, it was then too late for Government to act upon this Memorial, so as to supersede the discussions and decision that were to take place in the Court, and a few individuals, therefore, of those who concurred in it, hastily prepared another Memorial of the same tenor in the morning of that day, addressed to the Supreme Court itself, demonstrating our unshaken attachment to the British Government, and praying the Court to withhold its sanction from a Regulation which would deprive us of an invaluable privilege, firmly secured to us by the Laws of the Land, which we had so long enjoyed and could not be charged with ever having abused. (Annexed paper No. 2.) And although from these circumstances, the Memorial had still fewer signatures, your Majesty's faithful subjects reposed in the hope, that in appealing to a British Court of Law they might rely more on the justice of their cause, than the number or weight of names, especially, since it is well-known, that there are many under the immediate influence of Government, who would not express an opinion against the acts of those in power at the time, although it were to secure the salvation of all their countrymen.

9th. This Memorial being, by the order of the Judge, read by the Registrar of the Court, Mr. Fergusson, (who besides his professional skill and eminence as an English Lawyer, has acquired by his long practice at the Calcutta Bar, a very intimate acquaintance with the state of this Country) in virtue of the permission granted him, entered into an argument, shewing the Rule and Ordinance to be both illegal and inexpedient. (The grounds on which he opposed it are given at length, annexed paper No. 3.)

10th. These and other conclusive arguments, urged by Mr. Fergusson, and also by Mr. Turton, both eminently skilled in the Laws of England, powerfully strengthened the hopes previously created by the observations that formerly fell from the Bench, that

the learned Judge would enter his protest against such a direct violation of the Laws, and uncalled for invasion of the rights of your faithful subjects.

11th. Notwithstanding, we observed with astonishment and regret, that his Lordship, in giving his decision, paid no regard whatever to the above Memorial, not alluding to it in the most distant manner, nor to the argument it contained; and his Lordship further disclosed, that at the time he expressed a desire to hear every objection that could be urged, and recommended a Memorial to Government against it, from which your faithful subjects unanimously hoped that the mind of the Judge was undecided, and rather unfavourable to the Rule, his Lordship had previously pledged himself by promise to Government to give it his sanction. (Annexed paper No. 4, containing the speech made by Sir Francis Macnaghten the Judge, who presided on the occasion).

12th. Your Majesty's faithful subjects cannot account for the inconsistency manifested by Sir F. Macnaghten in two different points with regard to the sanctioning of this Regulation. In the first place, according to his Lordship's own statement from the Bench, he refused not only once, but twice, to see the Regulation before it passed in Council, probably because his Lordship thought it improper for him to give it his approbation until it came before him in the regular manner; but he afterwards, when application was made to him a third time, not only consented to read it, but with some alterations agreed to give it his sanction, a change of conduct for which no reason was assigned by his Lordship. Again, when application was made to his Lordship to hear the objections that might be urged against it, before giving it his Judicial approval, his Lordship withheld from the knowledge of the public, not only that he had already so pledged himself; but even that he had previously seen the Regulation, and expressed himself ready to hear all that could be said respecting it, in the same manner as if his mind had been unfettered by any promise, and perfectly open to conviction. Consequently some of your Majesty's faithful subjects prepared a Memorial and retained Counsel against the new Regulation, and had afterwards the mortification to find that their representations were treated with contemptuous neglect, and that the arguments of the most able Lawyers could be of no avail.

13th. Your Majesty in Parliament has been graciously pleased to make it a part of the Law of this Country, that after a Regulation has

passed the Council, it must be fixed up for twenty days in the Supreme Court, before it can be registered, so as to receive the full force of Law, an interval which allows the Judge time for deliberation and to hear from others all the objections that may exist to the proposed measure, and might have the effect of preventing the establishment of injudicious and inexpedient or unjust and oppressive acts; but if, as in this case, the Judges enter into previous compact with the Local Government, and thus preclude the possibility of any effectual representation from your faithful subjects, who have no intimation of what is meditated till it be finally resolved upon, the salutary effect of twenty days' delay is lost, and your faithful subjects will be in constant apprehension, that the most valuable and sacred of their rights may, as in this instance, be suddenly snatched from them at a moment's warning, before they know that such a measure is in contemplation, or have time to represent the evils which it is calculated to inflict upon them.

14th. In pursuance of the Regulation passed as above described, the Government issued an official order in the "GOVERNMENT GAZETTE," of the 5th of April, commanding the attention of Editors of Newspapers, or other periodical works, to certain restrictions therein contained, prohibiting all matters which it might consider as coming under the following heads:

(1st). Defamatory or contumelious reflections against the King, or any of the Members of the Royal Family.

(2nd). Observations or statements touching the character, constitution, measures or orders of the Court of Directors, or other public authorities in England, connected with the Government of India, or the character, constitution, measures, or orders of the Indian Governments, impugning the motives and designs of such authorities of Governments, or in any way tending to bring them into hatred or contempt, to excite resistance to their orders, and to weaken their authority.

(3rd). Observations or statements of the above description, relative to, allied or Friendly Native Powers, their Ministers, or Representatives.

(4th). Defamatory or contumelious remarks or offensive insinuations levelled against the Governor-General, the Governors or Commanders-in-Chief the Members of Council, or the Judges of His Majesty's Courts at any of the Presidencies, or the Bishop of Calcutta,

and publications of any description, tending to expose them to hatred, obloquy or contempt, also libellous or abusive reflections and insinuations against the Public Officers of Government.

(5th.) Discussions having a tendency to create alarm or suspicion among the native population of any intended official interference with their religious opinions and observances, and irritating and insulting remarks on their peculiar usages and modes of thinking on religious subjects.

(6th.) The republication from English, or other papers, of passages coming under the foregoing heads.

(7th.) Defamatory publications tending to disturb the peace, harmony, and good order of society.

(8th.) Anonymous appeals to the Public, relative to grievances of professional or official nature, alleged to have been sustained by public officers in the service of His Majesty or the Honourable Company.

This Copy of the Restrictions will be authenticated by the annexed Copy (No. 5).

15th. The above Restrictions, as they are capable of being interpreted, will in fact afford Government and all its Functionaries from the highest to the lowest, complete immunity from censure or exposure respecting anything done by them in their official capacity, however desirable it might be for the interest of the Country, and also that of this Honourable Company, that the public conduct of such public men should not be allowed to pass unnoticed. It can scarcely be doubted that the real object of these Restrictions is, to afford all the Functionaries of Government complete security against their conduct being made the subject of observation, though it is associated with a number of other restraints totally uncalled for, but well calculated to soothe the supreme authorities in England and win their assent to the main object of the Rule—the suppression of public remark on the conduct of the public Officers of Government in India.

16th. Your Majesty's faithful subjects could have surely no ducement in this distant quarter of the world to make contumacious and injurious reflections on your Majesty or any of the members of your Majesty's illustrious family, or to circulate them among the people to whom your Majesty's name is scarcely known, and to the remotest part of whom, even the fame of your greatness and power

has not reached ; but to those few Natives who are possessed of sufficient information to understand the political situation of England, the English Newspapers and Books which are constantly brought to this country in great abundance, are equally intelligible with the periodical publications printed in Calcutta.

17th. Neither can your Majesty's faithful subjects have any wish to make remarks on the proceedings of the Court of Directors, of whose benificent intentions they are well convinced, but that the Honourable Body who have so often manifested their earnest desire to ameliorate the condition of their Indian dependants, must be naturally anxious to be made exactly acquainted with the manner in which their wishes are carried into execution, and the operation and effect of the acts passed relative to this country.

18th. Whoever shall maliciously publish what has a tendency to bring the Government into hatred and contempt, or excite resistance to its orders, or weaken their authority, may be punished by Law as guilty of treason or sedition ; and surely in a country enjoying profound peace externally and internally, and where seditious and treasonable publications are unknown, it could not be necessary for Government to throw aside of a sudden, the Laws which for anything that has appeared, were fully sufficient, and arm itself with new and extraordinary powers at a time when that Government is more secure than at any former period.

19th. It may surely be left for British Judges and Juries to determine whether the mention made of the proceedings of Government, be malevolent, seditious and dangerous to the State, so as to render a writer or publisher culpable and amenable to punishment ; but if the mere mention of the conduct of Government without misrepresentation or malice on the part of the writer, bring it into hatred and contempt, such conduct will never receive the countenance or protection of your Majesty by the sanction of a Law to prevent its exposure to public observation, and the discovery of that dissatisfaction it may have occasioned, which would afford the higher authorities an opportunity of removing them.

20th. After a body of English Missionaries have been labouring for about twenty-five years by preaching and distributing publications in the native languages in all parts of Bengal, to bring the prevailing system of religion into disrepute, no alarm whatever prevails, because your Majesty's faithful subjects possess the power of defending

their Religion by the same means that are employed against it, and many of them have exercised the freedom of the Press to combat the writings of English missionaries, and think no other protection necessary to the maintenance of their faith. While the Teachers of Christianity use only reason and persuasion to propagate their Religion, your Majesty's faithful subjects are content to defend theirs by the same weapons, convinced that true Religion needs not the aid of the sword or of legal penalties for its protection. While your Majesty's faithful subjects perceived that Government shewed no displeasure, and claimed no arbitrary power of preventing the publication of what was written in defence of the prevailing religion of the country, it was impossible to entertain any such suspicion as that intimated in the 5th article, viz., that Government would interfere with the established faith of the natives of this country. Nevertheless, if any person with a malicious and seditious design were to circulate an unfounded rumour that Government meant so to interfere with our religious privileges, he would be severely punished by law: but if the Government really intended to adopt measures to change the religion of the country, your Majesty's faithful subjects would be absolutely prohibited by the present Restrictions from intimating the appalling intelligence to their countrymen: and although they have every reason to hope that the English nation will never abandon that religious toleration which has distinguished their progress in the East, it is impossible to foresee to what purposes of religious oppression such a Law might at some future time be applied.

21st. The office of the Lord Bishop of Calcutta not calling him to preach Christianity in that part of the town inhabited by the natives, or to circulate Pamphlets among them against the established Religion of the Country, but being of a nature totally distinct, and not at all interfering with the religious opinion of the native population, they could never dream of vilifying and defaming his character or office.

22nd. The Judges of the Supreme Court in Calcutta and of the English Courts of Judicature at the other Presidencies, enjoy, in virtue of their office, the power of protecting their characters and official conduct from defamation and abuse: since such would be either a contempt of the Court, liable to summary punishment, or punishable by those Laws enacted against libel. It is therefore hard to be conceived, that they stand in need of still further protection, unless it should be wished thereby to create an idea of their infallibi-

lity, which however is incompatible with the freedom allowed to Barristers, of delivering their sentiments beforehand on the justice or injustice of the opinions the Judges may pronounce, and in case of appeal, of controverting the justice and equity of their decision. The only object such a restriction is calculated to attain, must therefore be defeated, unless it be meant thereby to prevent the publication of the pleadings which as they take place in an English Court of Judicature are by Law public, and ought to be accessible to all.

23rd. The seventh restriction prohibiting defamatory publications tending to disturb the peace, harmony, and good order of Society, is equally unnecessary, since the British Legislature has already provided a punishment for such offences by the Laws enacted against libel.

24th. Your Majesty's faithful subjects will not offer any more particular remarks on the superfluous Restrictions introduced to accompany those more important ones which are the principal object of Government, and will conclude with this general observation, that they are unnecessary, either because the offences prohibited are imaginary and improbable, or because they are already provided for by the Laws of the Land, and either the Government does not intend to put them in force at all, or it is anxious to interrupt the regular course of justice, abolish the right of Trial by Jury and, by taking the Law into its own hands, to combine the Legislative and Judicial power, which is destructive of all Civil Liberty.

25th. Your Majesty's faithful subjects have heard that, Your Majesty constantly submits to the greatest freedom of remark among your British-born subjects without losing any part of the homage and respect due to your exalted character and station, and that the conduct of your Ministers is constantly the topic of discussion, without destroying the dignity and power of the Government. While such is the case in a country where it is said above nine-tenths of the Inhabitants read newspapers, and are therefore liable to be led by the opinions circulated through the Press, its capability of bringing a Government into hatred and contempt must be far less in a country where the great mass of the population do not read at all, and have the greatest reverence for men in power, of whom they can only judge by what they feel, and are not to be moved by what is written, but by what is done, where consequently Government can only be brought into hatred and contempt by its own acts.

26th. The Marquis of Hastings, who had associated for the greater part of his life, with Kings and Princes, entertained no apprehension that the salutary control of public scrutiny which he commended, would bring him or his Indian administration into hatred and contempt; and in effect, instead of such being the result, the greater the freedom he allowed to the European conductors of the Press, only rendered his name the most honored and revered in this part of the world, because it was universally believed, that his conduct proceeded from a consciousness of rectitude which feared no investigation.

27th. But your faithful subjects might forbear urging further arguments on this subject to your Majesty, who with your actions open to observation, possess the love, the esteem, and the respect of mankind, in a degree which none of the despotic Monarchs of Europe or Asia can ever attain, whose subjects are prohibited from examining and expressing their opinions regarding their conduct.

28th. Asia unfortunately affords few instances of Princes who have submitted their actions to the judgment of their subjects, but those who have done so, instead of falling into hatred and contempt, were the more loved and respected, while they lived, and their memory is still cherished by posterity; whereas more despotic Monarchs, pursued by hatred in their life time, could with difficulty escape the attempts of the rebel or the assassin, and their names are either detested or forgotten.

29th. The idea of the possession of absolute power and perfection, is evidently not necessary to the stability of the British Government of India, since your Majesty's faithful subjects are accustomed to see private individuals citing the Government before the Supreme Court, where the justice of their acts is fearlessly impugned, and after the necessary evidence being produced and due investigation made, judgment not unfrequently given against the Government, the judge not feeling himself restrained from passing just sentence by any fear of the Government being thereby brought into contempt. And your Majesty's faithful subjects only pray, that it may be permitted by means of the Press or by some other means equally effectual, to bring forward evidence regarding the acts of Government which affect the general interest of the community, that they also may be investigated and reversed, when those who have the power of doing so, become convinced that they are improper or injurious.

30th. A Government conscious of rectitude of intention, cannot be afraid of public scrutiny by means of the Press, since this instrument can be equally well employed as a weapon of defence, and a Government possessed of immense patronage, is more especially secure, since the greater part of the learning and talent in the country being already enlisted in the service, its actions, if they have any shadow of Justice, are sure of being ably and successfully defended.

31st. Men in power hostile to the Liberty of the Press, which is a disagreeable check upon their conduct, when unable to discover any real evil arising from its existence, have attempted to make the world imagine, that it might, in some possible contingency, afford the means of combination against the Government, but not to mention that extraordinary emergencies would warrant measures which in ordinary times are totally unjustifiable, your Majesty is well aware, that a Free Press has never yet caused a revolution in any part of the world, because, while men can easily represent the grievances arising from the conduct of the local authorities to the supreme Government, and thus get them redressed, the grounds of discontent that excite revolution are removed; whereas, where no freedom of the Press existed, and grievances consequently remained unrepresented and unredressed, innumerable revolutions have taken place in all parts of the globe, or if prevented by the armed force of the Government, the people continued ready for insurrection.

32nd. The servants of the Honourable Company are necessarily firmly attached to that system from which they derive their consequence and power, and on which their hopes of higher honours and still greater emoluments depend; and if it be possible to imagine, that these strong considerations are not sufficient to preserve subordination among them, the power of suspension and ruin which hangs over their heads for any deviation from duty, is certainly sufficient to secure that object.

33rd. After the British Government has existed for so many years, it has acquired a certain standard character in the minds of the natives of India, from the many excellent men who have from time to time held the reins of power, and the principles by which they have been guided. Whatever opinion, therefore, may be entertained of the individuals composing it at a particular period, while the source of power remains the same, your Majesty's faithful subjects cannot of a sudden lose confidence in the virtue of the

stream, since although it may for a period be tainted with corruption, yet in the natural course of events it must soon resume its accustomed character. Should individuals abuse the power entrusted to them, public resentment cannot be transferred from the delinquents to the Government itself, while there is a prospect of remedy from the higher authorities ; and should the highest in this country turn a deaf ear to all complaint, by forbidding grievances to be even mentioned, the spirit of loyalty is still kept alive by the hope of redress from the authorities in England ; thus the attachment of the Natives of India, to the British Government must be as permanent as their confidence in the honour and Justice of the British nation, which is their last Court of Appeal next to Heaven. But if they be prevented from making their real condition known in England, deprived of this hope of redress, they will consider the most peculiar excellence of the British Government of India, as done away.

34th. If these conclusions drawn from the particular circumstances of this country, be met with such an argument as that a colony or distant dependency can never safely be entrusted with the Liberty of the Press, and that therefore Natives of Bengal cannot be allowed to exercise the privileges they have so long enjoyed, this would be in other words to tell them, that they are condemned to perpetual oppression and degradation, from which they can have no hope of being raised during the existence of the British Power.

35th. The British nation has never yet descended to avow a principle so foreign to their character, and if they could for a moment entertain the idea of preserving their power by keeping their colonies in ignorance, the prohibition of periodical publications is not enough, but printing of all kinds, education, and every other means of diffusing knowledge should be equally discouraged and put down. For it must be the distant consequences of the diffusion of knowledge that are dreaded by those (if there be any such) who are really apprehensive for the stability of Government, since it is well known to all in the least acquainted with this country, that although every effort were made by periodical as well as other publications, a great number of years must elapse before any considerable change can be made in the existing habits and opinions of the Natives of India, so firmly are they wedded to established custom. Should apprehensions so unworthy of the English nation prevail, then unlike the ancient Romans who extended their knowledge and civilization with their

conquests, ignorance and degradation must mark the extent of British Power. Yet surely even this affords no hope of perpetual rule, since notwithstanding the tyranny and oppression of Gengis Khan and Tamerlane, their empire was not so lasting as that of the Romans, who to the proud title of conquerors, added the more glorious one of Enlighteners of the World. And of the two most renowned and powerful monarchs among the Moghuls, Akbar was celebrated for his clemency, for his encouragement of learning, and for granting civil and religious liberty to his subjects, and Aurungzebe, for his cruelty and intolerance, yet the former reigned happy, extended his power and his dominions, and his memory is still adored, whereas the other, though endowed with equal abilities and possessed of equal power and enterprize, met with many reverses and misfortunes during his lifetime, and his name is now held in abhorrence.

36th. It is well known that despotic Governments naturally desire the suppression of any freedom of expression which might tend to expose their acts to the obloquy which ever attends the exercise of tyranny or oppression, and the argument they constantly resort to, is, that the spread of knowledge is dangerous to the existence of all legitimate authority, since, as a people become enlightened, they will discover that by a unity of effort, the many may easily shake off the yoke of the few, and thus become emancipated from the restraints of power altogether, forgetting the lesson derived from history, that in countries which have made the smallest advances in civilization, anarchy and revolution are most prevalent—while on the other hand, in nations the most enlightened, any revolt against governments which have guarded inviolate the rights of the governed, is most rare, and that the resistance of a people advanced in knowledge, has ever been—not against the existence,—but against the abuses of the Governing power. Canada, during the late war with America, afforded a memorable instance of the truth of this argument. The enlightened inhabitants of that colony, finding that their rights and privileges had been secured to them, their complaints listened to, and their grievances redressed by the British government, resisted every attempt of the United States to seduce them from their allegiance to it. In fact, it may be fearlessly averred, that the more enlightened a people become, as it is less likely are they to revolt against the governing power, as long as privilege is exercised with justice tempered with mercy, and the rights and interests of the governed are held sacred from any invasion.

37th. If your Majesty's faithful subjects could conceive for a moment, that the British nation actuated solely by interested policy, considered India merely as a valuable property, and would regard nothing but the best means of securing its possession and turning it to advantage, even then, it would be of importance to ascertain whether this property be well taken care of by their servants, on the same principle that good masters are not indifferent about the treatment of their slaves.

38th. While therefore the existence of a free Press is equally necessary for the sake of the Governors and the governed, it is possible a national feeling may lead the British people to suppose, that in two points, the peculiar situation of this country requires a modification of the laws enacted for the control of the Press in England. First, that for the sake of greater security and to preserve the union existing between England and this country, it might be necessary to enact a penalty to be inflicted on such persons as might endeavour to excite hatred in the minds of the Natives of India against the English nation. Secondly, that a penalty should be inflicted on such as might seditiously attempt to excite hostilities with neighbouring or friendly states. Although your Majesty's faithful subjects are not aware that anything has yet occurred to call for the precautions thus anticipated, yet should such or any other limitations of the liberty of the Press be deemed necessary, they are perfectly willing to submit to additional penalties to be legally inflicted. But they must humbly enter their protest against the injustice of robbing them of their long standing privileges, by the introduction of numerous arbitrary restrictions, totally uncalled for by the circumstances of the country—and whatever may be their intention, calculated to suppress truth, protect abuses—and encourage oppression.

39th. Your Majesty's faithful subjects now beg leave to call your Majesty's attention to some peculiarly injurious consequences of the new laws that have thus been suddenly introduced in the manner above described. First, the above Rule and Ordinance has deprived your Majesty's faithful subjects of the liberty of the Press, which they had enjoyed for so many years since the establishment of the British Rule. Secondly, your Majesty's faithful subjects are deprived of the protection of your Majesty and the high council of the British nation, who have hitherto exclusively exercised the legislative power in this part of your Majesty's dominions.

40th. If upon representations being made by the local authorities in the country, your Majesty after due investigation had been pleased with the advice of the high council of the realm to order the abolition of the liberty of the Press in India, your Majesty's faithful subjects from the feeling of respect and loyalty due to the supreme legislative power, would have patiently submitted, since although they would in that case, still have lost one of their most precious privileges, yet their claim to the superintendence and protection of the highest legislative authority in whom your faithful subjects have unbounded confidence, would still have remained unshaken; but were this Rule and Ordinance of the local Government to be held valid, and thus remain as a precedent for similar proceedings in future, your faithful subjects would find their hope of protection from the Supreme Government, cut off, and all their civil and religious rights placed entirely at the mercy of such individuals as may be sent from England to assume the executive authority in this country, or rise into power through the routine of office, and who from long officiating in an inferior station, may have contracted prejudices against individuals or classes of men, which ought not to find shelter in the breast of the Legislator.

41st. As it never has been imagined, or surmised in this country, that the Government was in any immediate danger from the operation of the native Press, it cannot be pretended, that the public safety required strong measures to be instantly adopted, and that consequently there was not sufficient time to make a representation to the authorities in England, and wait for their decision, or that it was incumbent on the highest Judicial authority in India, to sanction an act so repugnant to the laws of England, which he has sworn to maintain inviolate.

42nd. If as your Majesty's faithful subjects have been informed this Government were dissatisfied with the conduct of the English newspaper, called the "Calcutta Journal," the banishment of the Editor of that paper, and the power of punishing those left by him to manage his concern, should they also give offence, might have satisfied the Government; but at any rate your Majesty's faithful subjects, who are natives of this country, against whom there is not the shadow of a charge, are at a loss to understand the nature of that justice which punishes them, for the fault imputed to others. Yet notwithstanding what the local authorities of this country have

done, your faithful subjects feel confident, that your Majesty will not suffer it to be believed throughout your Indian territories, that it is British justice to punish millions for the fault imputed to one individual.

43rd. The abolition of this most precious of their privileges, is the more appalling to your Majesty's faithful subjects, because it is a violent infringement of their civil and religious rights, which under the British Government, they hoped would be always secure. Your Majesty is aware, that under their former Muhammadan Rulers, the natives of this country enjoyed every political privilege in common with Mussulmans, being eligible to the highest offices in the state, entrusted with the command of armies and the government of provinces and often chosen as advisers to their Prince, without disqualification or degrading distinction on account of their religion or the place of their birth. They used to receive free grants of land exempted from any payments of revenue, and besides the highest salaries allowed under the Government, they enjoyed free of charge, large tracts of country attached to certain offices of trust and dignity, while natives of learning and talent were rewarded with numerous situations of honour and emolument. Although under the British Rule, the natives of India, have entirely lost this political consequence, your Majesty's faithful subjects were consoled by the more secure enjoyment of those civil and religious rights which had been so often violated by the rapacity and intolerance of the Mussalman; and notwithstanding the loss of political rank and power, they considered themselves much happier in the enjoyment of civil and religious liberty than were their ancestors; but if these rights that remain are allowed to be unceremoniously invaded, the most valuable of them being placed at the mercy of one or two individuals, the basis on which they have founded their hopes or comfort and happiness under the British Power, will be destroyed.

44th. Your Majesty has been pleased to place this part of your dominions under the immediate control of the Court of Directors, and this Honourable Body have committed the entire management of this country (Calcutta excepted) to a number of gentlemen styled Civil Servants, usually under the superintendence of a Governor-General. These gentlemen who are entrusted with the whole administration, consist of three classes; First, subordinate local officers such as Judges of Districts, Magistrates, Collectors and commercial

agents ; Secondly, officers superior to them as Judges of Circuit, and Members of different Revenue and Commercial Boards, &c. Thirdly, those who fill the highest and most important offices, as Judges of the Sudder Dewany Adalut, Secretaries to Government, the Members of the Supreme Council, and sometimes a Civil Servant may rise to the highest office, of Governor General of India. In former times, native fathers were anxious to educate their children according to the usages of those days, in order to qualify them for such offices under government as they might reasonably hope to obtain ; and young men had the most powerful motives for sedulously cultivating their minds, in the laudable ambition of rising by their merits to an honourable rank in society ; whereas, under the present system, so trifling are the rewards held out to native talent, that hardly any stimulus to intellectual improvement remains ; yet, your Majesty's faithful subjects felt confident, that notwithstanding these unfavourable circumstances, the natives of India would not sink into absolute mental lethargy while allowed to aspire to distinction in the world of letters, and to exercise the liberty of the Press for their moral and intellectual improvement, which are far more valuable than the acquisition of riches or any other temporal advantages under arbitrary power.

45th. Those gentlemen propose and enact laws for the Government of the extensive territory under their control, and also administer these laws ; collect revenue of all sorts, and superintend manufactories carried on in behalf of the state ; and they have introduced according to their judgment, certain judicial, commercial, and revenue systems, to which it may be supposed they are partial, as being their own, and therefore support them with their whole influence and abilities as of the most efficient and salutary character. It is also the established custom of these gentlemen to transmit official reports from time to time, to the Court of Directors, to make them acquainted with the mode in which the country is governed, and the happiness enjoyed by the people of this vast empire, from the manner in which the laws are administered.

46th. Granting that those gentlemen were almost infallible in their judgment and their systems nearly perfect ; yet your Majesty's faithful subjects may be allowed to presume, that the paternal anxiety which the Court of Directors have often expressed for the welfare of the many millions dependent upon them in a country situated at the

Distance of several thousand miles, would suggest to them the propriety of establishing some other means besides, to ascertain whether the systems introduced in their Indian possessions, prove so beneficial to the natives of this country, as their authors might fondly suppose or would have others believe, and whether the Rules and Regulations which may appear excellent in their eyes, are strictly put in practice.

47th. Your Majesty's faithful subjects are aware of no means by which impartial information on these subjects can be obtained by the Court of Directors or other authorities in England, except in one of the two following modes: either, first, by the existence of a Free Press in this country and the Establishment of Newspapers in the different Districts under the special patronage of the Court of Directors and subject to the control of law only, or secondly by the appointment of a commission composed of gentlemen of intelligence and respectability, totally unconnected with the Governing Body in this country, which may from time to time, investigate on the spot, the condition of your Majesty's faithful subjects, and judge with their own eyes regarding the operation of the systems of law and jurisprudence under which they live.

48th. But the immense labour required for surveying a country of such extent, and the great expense that would be necessary to induce men of such reputation and ability as manifestly to qualify them for the important task, to undertake a work of such difficulty, which must be frequently repeated, present great, if not insuperable obstacles to the introduction or efficacy of the latter mode of proceeding by commission; from which your Majesty's faithful subjects therefore, do not entertain any sanguine expectations; unless your Majesty influenced by humane considerations for the welfare of your subjects, were graciously pleased to enjoin its adoption from a conviction of its expediency whatever might be the expense attending it.

49th. The publication of truth and the natural expression of men's sentiments through the medium of the Press, entail no burden on the State, and should it appear to your Majesty and the enlightened men placed about your throne, that this precious privilege which is so essential to the well-being of your faithful subjects, could not safely be entrusted to the Natives of India, although they have given such unquestionable proofs of their loyalty and attachment, subject only to the restraints wisely imposed upon the Press by the laws of England, your faithful subjects entreat on behalf of their

countrymen, that your Majesty will be graciously pleased to grant it, subject to such severer restraints and heavier penalties as may be deemed necessary ; but legal restraints, not those of arbitrary power—and penalties to be inflicted after trial and conviction according to the forms of the Laws of England,—not at the will and pleasure of one or two individuals without investigation or without hearing any defence or going through any of the forms prescribed by law, to ensure the equitable administration of justice.

50th. Notwithstanding the despotic power of the Mogul Princes who formerly ruled over this country, and that their conduct was often cruel and arbitrary, yet the wise and virtuous among them, always employed two intelligencers at the residence of their Nawabs or Lord Lieutenants, *Akhbar-navees*, or news-writer who published an account of whatever happened, and a *Khoofea-navees*, or confidential correspondent, who sent a private and particular account of every occurrence worthy of notice ; and although these Lord Lieutenants were often particular friends or near relations to the Prince, he did not trust entirely to themselves for a faithful and impartial report of their administration, and degraded them when they appeared to deserve it, either for their own faults or for their negligence in not checking the delinquencies of their subordinate officers ; which shews that even the Mogul Princes, although their form of Government admitted of nothing better, were convinced, that in a country so rich and so replete with temptations, a restraint of some kind was absolutely necessary, to prevent the abuses that are so liable to flow from the possession of power

51st. The country still abounds in wealth, and its inhabitants are still addicted to the same corrupt means of compassing their ends, to which from having long lived under arbitrary Government, they have become naturally habituated ; and if its present Rulers have brought with them purer principles from the land of their birth which may better withstand the influence of long residence amid the numerous temptations to which they are exposed ;—on the other hand, from the seat of the Supreme Government being placed at an immense distance and the channel of communication entirely in their own hands, they are left more at liberty to follow their own interests, and looking forward to the quiet and secure enjoyment of their wealth in their native land, they may care little for the character they leave behind them in a remote country, among a people for whose opinion they

have no regard. Your Majesty's faithful subjects, therefore, humbly presume, that the existence of a restraint of some kind, is absolutely necessary to preserve your faithful subjects from the abuses of uncontrolled power.

52nd. That your Majesty may be convinced, that your faithful subjects do not allude merely to possible abuses, or point out only theoretical defects in established systems, they beg leave to call your Majesty's attention to the observations contained in a Number of a most respectable Baptist Missionary work, the accuracy of which, although it has now been two years* in circulation, in all parts of India, not one of the numerous civil servants of the Honourable Company, has ventured to dispute nor have the flagrant abuses it points out, been remedied

53rd. It might be urged on the other hand, that persons who feel aggrieved, may transmit representations to the Court of Directors, and thus obtain redress ; but the natives of this country are generally ignorant of this mode of proceeding ; and with neither friends in England nor knowledge of the country, they could entertain no hope of success, since they know that the transmission of their representations, depends in point of time, upon the pleasure of the local Government, which will probably, in order to counteract their influence, accompany them with observations, the nature of which would be totally unknown to the complainants,—discouragements which in fact have operated as complete preventives, so that no instance of such a representation from the Natives of Bengal, has ever been known.

54th. In conclusion, your Majesty's faithful subjects humbly beseech your Majesty, first, to cause the Rule and Ordinance and Regulation before mentioned, which has been registered by the Judge of your Majesty's Court, to be rescinded ; and prohibit any authority in this country, from assuming the legislative power, or prerogatives of your Majesty and the High Council of the Realm, to narrow the privileges and destroy the rights of your Majesty's faithful subjects, who claim your protection, and are willing to submit to such laws, as your Majesty with the advice of your Council, shall be graciously pleased to enact

Secondly, your Majesty's faithful subjects humbly pray, that your Majesty will be pleased to confirm to them the privilege, they have so

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ong enjoyed, of expressing their sentiments through the medium of the Press, subject to such legal restraints as may be thought necessary or that your Majesty will be graciously pleased to appoint a commission of intelligent and independent Gentlemen, to inquire into the real condition of the millions Providence has placed under your high protection.

55th. Your Majesty's faithful subjects from the distance of almost half the globe, appeal to your Majesty's heart by the sympathy which forms a paternal tie between you and the lowest of your subjects, not to overlook their condition; they appeal to you by the honour of that great nation which under your Royal auspices has obtained the glorious title of Liberator of Europe, not to permit the possibility of millions of your subjects being wantonly trampled on and oppressed; they lastly appeal to you by the glory of your Crown on which the eyes of the world are fixed, not to consign the natives of India, to perpetual oppression and degradation.

A LETTER
ON
ENGLISH EDUCATION.

CALCUTTA:

1823

A LETTER ON ENGLISH EDUCATION.*

TO HIS EXCELLENCY THE RIGHT HONOURABLE LORD AMHERST.
GOVERNOR-GENERAL IN COUNCIL.

MY LORD,

Humbly reluctant as the natives of India are to obtrude upon the notice of Government the sentiments they entertain on any public measure, there are circumstances when silence would be carrying this respectful feeling to culpable excess. The present rulers of India, coming from a distance of many thousand miles to govern a people whose language, literature, manners, customs, and ideas, are almost entirely new and strange to them, cannot easily become so intimately acquainted with their real circumstances as the natives of the country are themselves. We should therefore be guilty of a gross dereliction of duty to ourselves and afford our rulers just grounds of complaint at our apathy, did we omit on occasions of importance like the present, to supply them with such accurate information as might enable them to devise and adopt measures calculated to be beneficial to the country, and thus second by our local knowledge and experience their declared benevolent intentions for its improvement.

The establishment of a new Sanscrit School in Calcutta evinces the laudable desire of Government to improve the natives of India by education,—a blessing for which they must ever be grateful, and every well-wisher of the human race must be desirous that the efforts

"The British Government was known to be appropriating funds for the promotion of Indian education ; and the kind of promotion most desirable was the subject of eager discussion. Should the Government seek simply to develop and deepen the education already in vogue in India ? Or should it boldly endeavour to introduce the innovations of European science and European culture ? The "Orientalists" clamoured for the exclusive pursuit of Oriental studies. They were hotly opposed by the "Anglicists," chief among whom was Rammohun Roy. The Government seemed inclined to yield to the Orientalist view and announced the intention of establishing a Sanskrit College in Calcutta. This step drove Rammohun, undaunted by the scant courtesy which his former appeals to the British authorities had received, to address a *Letter on English Education* to Lord Amherst, the new Governor-General."—*The Life and Letters of Raja Rammohun Roy*, by Miss Collet

made to promote it, should be guided by the most enlightened principles, so that the stream of intelligence may flow in the most useful channels.

When this seminary of learning was proposed, we understood that the Government in England had ordered a considerable sum of money to be annually devoted to the instruction of its Indian subjects. We were filled with sanguine hopes that this sum would be laid out in employing European gentlemen of talent and education to instruct the natives of India in Mathematics, Natural Philosophy, Chemistry, Anatomy, and other useful sciences, which the natives of Europe have carried to a degree of perfection that has raised them above the inhabitants of other parts of the world.

While we looked forward with pleasing hope to the dawn of knowledge, thus promised to the rising generation, our hearts were filled with mingled feelings of delight and gratitude, we already offered up thanks to Providence for inspiring the most generous and enlightened nations of the West with the glorious ambition of planting in Asia the arts and sciences of Modern Europe.

We find that the Government are establishing a Sanscrit school under Hindu Pandits to impart such knowledge as is already current in India. This seminary (similar in character to those which existed in Europe before the time of Lord Bacon) can only be expected to load the minds of youth with grammatical niceties and metaphysical distinctions of little or no practical use to the possessors or to society. The pupils will there acquire what was known two thousand years ago with the addition of vain and empty subtleties since then produced by speculative men, such as is already commonly taught in all parts of India.

The Sanscrit language, so difficult that almost a life time is necessary for its acquisition, is well known to have been for ages a lamentable check to the diffusion of knowledge, and the learning concealed under this almost impervious veil, is far from sufficient to reward the labour of acquiring it. But if it were thought necessary to perpetuate this language for the sake of the portion of valuable information it contains, this might be much more easily accomplished by other means than the establishment of a new Sanscrit College; for there have been always and are now numerous professors of Sanscrit in the different parts of the country engaged in teaching this language, as well as the other branches of literature which are to be the

object of the new seminary. Therefore their more diligent cultivation, if desirable, would be effectually promoted, by holding out premiums and granting certain allowances to their most eminent professors, who have already undertaken on their own account to teach them, and would by such rewards be stimulated to still greater exertion.

From these considerations, as the sum set apart for the instruction of the natives of India was intended by the Government in England for the improvement of its Indian subjects, I beg leave to state, with due deference to your Lordship's exalted situation, that if the plan now adopted be followed, it will completely defeat the object proposed, since no improvement can be expected from inducing young men to consume a dozen years of the most valuable period of their lives, in acquiring the niceties of Vyakaran or Sanskrit Grammar, for instance, in learning to discuss such points as the following: *khaa*, signifying to eat, *khadati* he or she or it eats, query, *neener* does *khadati* taken as a whole convey the meaning he she or it eats, or are separate parts of this meaning conveyed by distinctions of the words, as if in the English language it were asked how much meaning is there in the *eat* and how much in the *s*, and is the whole meaning of the word conveyed by these two portions of it distinctly or by them taken jointly?

Neither can much improvement arise from such speculations as the following which are the themes suggested by the Vedanta,—in what manner is the soul absorbed in the Deity? What relation does it bear to the Divine Essence? Nor will youths be fitted to be better members of society by the Vedantic doctrines which teach them to believe, that all visible things have no real existence, that as father brother, &c., have no actual entity, they consequently deserve no real affection, and therefore the sooner we escape from them and leave the world the better.

Again, no essential benefit can be derived by the student of the *Mimansa* from knowing what it is that makes the killer of a goat sinless by pronouncing certain passages of the Vedanta and what is the real nature and operative influence of passages of the Vedas, &c.

The student of the Nyaya Sastra cannot be said to have improved his mind after he has learned from it into how many ideal classes the objects in the universe are divided and what speculative relation, the soul bears to the body, the body to the soul, the eye to the ear, &c.

In order to enable your Lordship to appreciate the utility of encouraging such imaginary learning as above characterized, I beg your Lordship will be pleased to compare the state of science and literature in Europe before the time of Lord Bacon with the progress of knowledge made since he wrote.

If it had been intended to keep the British nation in ignorance of real knowledge, the Baconian philosophy would not have been allowed to displace the system of the schoolmen which was the best calculated to perpetuate ignorance. In the same manner the Sanscrit system of education would be the best calculated to keep this country in darkness, if such had been the policy of the British legislature. But as the improvement of the native population is the object of the Government, it will consequently promote a more liberal and enlightened system of instruction, embracing Mathematics, Natural Philosophy, Chemistry, Anatomy, with other useful sciences, which may be accomplished with the sums proposed by employing a few gentlemen of talent and learning educated in Europe and providing a College furnished with necessary books, instruments, and other apparatus.

In presenting this subject to your Lordship, I conceive myself discharging a solemn duty which I owe to my countrymen, and also to that enlightened sovereign and legislature which have extended their benevolent care to this distant land, actuated by a desire to improve the inhabitants, and therefore humbly trust you will excuse the liberty I have taken in thus expressing my sentiments to your Lordship.

I have the honour, &c.,
RAMMOHUN ROY.

APPENDIX.

ADDRESS TO LORD WILLIAM BENTINCK.*

TO THE RIGHT HON. LORD WILLIAM CAVENDISH BENTINCK. &c.

MY LORD,

With hearts filled with the deepest gratitude, and impressed with the utmost reverence, we, the undersigned native inhabitants of Calcutta and its vicinity, beg to be permitted to approach your Lordship, to offer personally our humble but warmest acknowledgements for the invaluable protection which your Lordship's government has recently afforded to the lives of the Hindoo female part of your subjects, and for your humane and successful exertions in rescuing us for ever, from the gross stigma hitherto attached to our character as wilful murderers of females, and zealous promoters of the practice of suicide.

Excessive jealousy of their female connections, operating on the breasts of Hindu princes, rendered those despots regardless of the common bonds of society, and of their incumbent duty as protectors of the weaker sex, insomuch that with a view to prevent every possibility of their widows forming subsequent attachments, they availed themselves of their arbitrary power, and under the cloak of religion, introduced the practice of burning widows alive under the first impressions of sorrow or despair, immediately after the demise of their husbands. The system of female destruction, being admirably

*After the abolition of the practice of Sutte, on January 14th, 1830, "a numerous and respectable body of petitioners, consisting of 800 inhabitants of Calcutta, laid before him their prayer for the abandonment of the prohibition. . . . Counter-demonstrations were speedily forthcoming. Two days afterwards two addresses were presented to the Governor-General in support of his Anti-Sutte policy. . . . The other was signed by 300 native inhabitants of the same city and presented by Rammohun Roy and several of his well-known comrades." *The Life and Letters of Raja Rammohun Roy* by Miss Collet.

Of this address Raja Rammohun Roy is the reputed and probable author.—*Ed.*

enited to the selfish and servile disposition of the pop lace, has been eagerly followed by them, in uenance of the most sacted authorities, such as the *Upanishads* or the principal parts of the *Vedas*, and the *Bhagavad Gita*, as well as of the direct commandment of Manu, the first and the greatest of all the legislators, conveyed in the following words: 'Let a widow continue till death fo-giving all injuries, performing austere duties, avoiding every sensual pleasure,' &c. (Ch. 5, v. 158.)

While in fact fulfilling the suggestions of their jealousy they pretended to justify this hideous practice by quoting some passage from authorities of evidently inferior weight, sanctioning the wilful ascent of a widow on the flaming pile of her husband, as if they were offering such female sacrifices in obedience to the dictates of the *Sastras* and not from the influence of jealousy. It is, however, very fortunate that the British government under whose protection the lives of both the males and females of India have been happily placed by Providence, has, after diligent inquiry, ascertained that even those inferior authorities, permitting wilful ascent by a widow to the flaming pile, have been practically set aside, and that, in gross violation of their language and spirit, the relatives of widows have, in the burning of those infatuated females, almost invariably used to fasten them down on the pile, and heap over them large quantities of wood and other materials adequate to the prevention of their escape—an outrage on humanity which has been frequently perpetrated under the indirect sanction of native officers, undeservedly employed for the security of life and preservation of peace and tranquillity

In many instances, in which the vigilance of the magistrate has deterred the native officers of police from indulging their own inclination, widows have either made their escape from the pile after being partially burnt, or retracted their resolution to burn when brought to the awful task, to the mortifying disappointment of the instigators: while in some instances the resolution to die has been retracted, on pointing out to the widows the impropriety of their intended undertaking, and on promising them safety and maintenance during life, notwithstanding the severe reproaches liable thereby to be heaped on them by their relatives and friends.

In consideration of circumstances so disgraceful in themselves, and so incompatible with the principles of British rule. your Lordship

in Council, fully impressed with the duties required of you by justice and humanity, has deemed it incumbent on you, for the honour of the British name, to come to the resolution, that the lives of your female Hindoo subjects should be henceforth more efficiently protected; that the heinous sin of cruelty to females may no longer be committed, and that the most ancient and purest system of Hindoo religion should not any longer be set at nought by the Hindoos themselves. The magistrates, in consequence, are, we understand, positively ordered to execute the resolution of government by all possible means.

We are, my Lord, reluctantly restrained by the consideration of the nature of your exalted situation, from indicating our inward feelings by presenting any valuable offering as commonly adopted on such occasions; but we should consider ourselves highly guilty of insincerity and ingratitude, if we remained negligently silent when urgently called upon by our feelings and conscience to express publicly the gratitude we feel for the everlasting obligation you have graciously conferred on the Hindoo community at large. We, however, are at a loss to find language sufficiently indicative even of a small portion of the sentiments we are desirous of expressing on the occasion; we must therefore conclude this address with entreating that your Lordship will condescendingly accept our most grateful acknowledgments for this act of benevolence towards us, and will pardon the silence of those who, though equally partaking of the blessing bestowed by your Lordship, have through ignorance or prejudice omitted to join us in this common cause.

ANTI-SUTTEE PETITION.*

TO THE HONOURABLE THE COMMONS OF THE UNITED
KINGDOM OF GREAT BRITAIN AND IRELAND IN
PARLIAMENT ASSEMBLED.

The humble Petition of the undersigned Natives of India
Sheweth,

That a practice has prevailed throughout India, particularly in Bengal, of burning those widows on the funeral piles of their deceased husbands, who could be induced to offer themselves as voluntary sacrifices.

That this barbarous and inhuman practice has been happily abolished by the Government of the Right Honourable Lord William Cavendish Bentinck, who has thus conferred an inestimable benefit on the native population of India.

That the regulation prohibiting the practice has been received with gratitude by many, while the majority of the native population have remained passive and acquiescent, although nearly a twelve-month has elapsed since the abolition took place.

That, as a proof of your Honourable House of the feeling entertained on the subject by a numerous portion of the native community, the subjoined address was presented to the Governor-General in Council expressive of their thanks for his benevolent interference.

[Here was recited the address presented by the Inhabitants of Calcutta to Lord William Bentinck, in January, 1830.]

That your petitioners have, however, learned that a number of natives, professing to be attached to the ancient practice, have prepared a petition to your Honourable House, soliciting the re-establishment of the rite of burning their widows; and therefore to prevent your Honourable House from supposing that their sentiments are those of the whole native population, your petitioners respectfully

*This petition was presented in opposition to the appeal of the advocates of Suttee to the authorities in England in favour of the practice. It is generally known to be, and is probably the production of Raja Rammohun Roy.-- Ed

present themselves to the notice of your Honourable House, and pray that the Regulation of the local government may be confirmed and enforced.

That your petitioners cannot permit themselves to suppose that such a practice, abhorrent to all the feelings of nature, the obligations of society, and the principles of good government, will receive the sanction of your Honourable House. much less that, having been abolished, the British name and character will be dishonoured by its re-establishment.

That your petitioners confidently rely on receiving from your Honourable House a full and final confirmation of the Act of the Governor-General in Council abolishing the rite of widow-burning.

And your petitioners will ever pray.

